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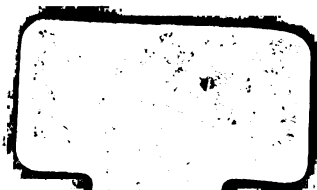
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SPEECHES

OF

LORD ERSKINE,

WHEN AT THE BAR,

ON

Miscellaneous Subjects.

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THE
EDITOR'S PREFACE.

THE Speeches comprehended in the four Volumes published by the Editor last year, being upon occasions of great and **PERMANENT** public interest, were formed into a distinct collection.

Those which are comprised in the present Volume (with the exception of that for Mr. Cuthell, which the Editor did not then possess) being upon miscellaneous subjects, he thought it best to reserve them for a separate publication.

JAMES RIDGWAY.

January 1, 1812.

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SPEECHES
OF
LORD ERSKINE,

WHEN AT THE BAR,

&c.

SPEECH

FOR

JAMES HADFIELD,

**IN THE COURT OF KING'S BENCH, ON A TRIAL
AT BAR,**

On the 26th of April, A. D. 1800.

PREFACE.

THE occasion of the trial of James Hadfield for high treason, in shooting at the King, at Drury Lane play-house, is too well remembered to require much preface. All the facts, besides, which led to the Prosecution, and which ended in the acquittal of the Defendant, on the ground of his having committed the act under the dominion of insanity, are fully detailed in the following defence by his Counsel.

The successful issue of this trial, notwithstanding the warm and just interest which the whole nation

took in the life a Prince, who had reigned in their affections for so many years, must ever be considered as a most striking instance of that cool, deliberate, and impartial administration of justice, which, since the glorious Revolution (for we can go no higher), has distinguished this country. What renders this Speech the more interesting and important, is the few instances which have occurred in our Courts, where it has become necessary to consider, and with the utmost precision to determine, in what cases mental derangement ought to be held to emancipate such unhappy persons from responsibility to the laws, for acts of great atrocity and violence. It is by no means every departure from sound reason and intellect, though sufficient to ground a commission of lunacy, and to deprive an individual of the management of his concerns, that would deliver him from an indictment of murder, or other criminal act of violence; the act itself must appear to have been committed under the full dominion of insanity; and Lord Erskine, therefore, took his stand upon the surest and safest ground, as it related to the safety of the public; and, therefore, the surest and safest for the unhappy Prisoner; having, probably, a full security in bringing his case within his principle, as appeared by the result of the trial, he took his claim of impunity as low as possible, and properly maintained the privilege of indemnity for those distempered persons ONLY, who commit crimes under the dominion of morbid delusions; but by no means extending to those whose in-

sanity, without delusion, is principally characterized by violence and turbulent passion. The principle is of the utmost importance, and the more so from the assent which it received from the Court of King's Bench, on a solemn trial at the Bar. Lord Kenyon appeared much against the Prisoner, in the course of the evidence for the Crown: but after the disclosure of the principle on which his defence was grounded, and the statement of the evidence which would be given to support it, he became convinced, as it was proceeded on; and on its coming up to the principal facts detailed in the following Speech, his Lordship, with that justice and feeling which eminently marked his character, delivered his opinion to the Attorney-General (as the opinion of the whole Court), that the trial should not be further proceeded in; which being acquiesced in by the present Lord Redesdale, then Attorney-General, and the other Counsel for the Crown, no reply was made to the Prisoner's defence—and he was acquitted.

It was said at the time, that the very learned Counsel for the Crown were not entirely satisfied with the view taken of the case by the Court (but of the truth of which we have no means of information). Be that, however, as it may—it is one of the noblest features in the practice of our criminal law, that, although Counsel are by no means bound to acquiesce in an opinion by the Judges, adverse to a Prisoner upon a capital trial; yet when the opinion

4 PREFACE TO MR. ERSKINE'S SPEECH, &c.

is in favour of life—above all, upon the view taken, even by a single Judge, much more by a whole Court, upon the evidence for the party accused; it would not be considered consonant to the mild characteristic of our laws for the ministers of the Crown to step beyond the Judges in the demand of criminal justice.

GENTLEMEN OF THE JURY,

THE scene which we are engaged in, and the duty which I am not merely *privileged*, but *appointed* by the authority of the Court to perform, exhibits to the whole civilized world a perpetual monument of our national justice.

The transaction, indeed, in every part of it, as it stands recorded in the evidence already before us, places our country, and its government, and its inhabitants, upon the highest pinnacle of human elevation. It appears, that upon the 15th day of May last, His Majesty, after a reign of forty years, not merely in sovereign *power*, but spontaneously in the very hearts of his people, was openly shot at (or to all appearance shot at) in a public theatre in the centre of his capital, and amidst the loyal plaudits of his subjects, YET NOT A HAIR OF THE HEAD OF THE SUPPOSED ASSASSIN WAS TOUCHED. In this unparalleled scene of calm forbearance, the King himself, though he stood first in personal interest and feeling as well as in command, was a singular and fortunate example.—The least appearance of emotion on the part of that august personage, must unavoidably have produced a scene quite different, and far less honourable than the Court is now witnessing; but His Majesty remained unmoved, and the person *apparently* offending was only secured, without injury or reproach, for the business of this day.

Gentlemen, I agree with the Attorney-General

(indeed, there can be no possible doubt), that if the same pistol had been maliciously fired by the Prisoner in the same theatre, at the meanest man within its walls, he would have been brought to *immediate* trial, and, if guilty, to immediate execution.—He would have heard the charge against him for the first time when the Indictment was read upon his arraignment.—He would have been a stranger to the names and even to the existence of those who were to sit in judgment upon him, and of those who were to be the witnesses against him ; but upon the charge of even this *murderous* attack upon the King himself, he is covered all over with the armour of the law. He has been provided with Counsel by the King's own Judges, and not of *their* choice, but of *his own*. He has had a copy of the Indictment ten days before this trial.—He has had the names, descriptions, and abodes of all the Jurors returned to the Court ; and the highest privilege of peremptory challenges derived from, and safely directed by that indulgence.—He has had the same description of every witness who could be received to accuse him ; and there must at this hour be *twice* the testimony against him as would be legally competent to establish his guilt on a similar prosecution by the meanest and most helpless of mankind.

Gentlemen, when this melancholy catastrophe happened, and the Prisoner was arraigned for trial, I remember to have said to some now present, that it was, at first view, difficult to bring those indul-

gent exceptions to the general rules of trial within the principle which dictated them to our humane ancestors in cases of treasons against the political government, or of *rebellious* conspiracy against the person of the King. In *these* cases, the passions and interests of great bodies of powerful men being engaged and agitated, a counterpoise became necessary to give composure and impartiality to criminal tribunals; but a *mere murderous* attack upon the King's person, not at all connected with his political character, seemed a case to be ranged and dealt with like a similar attack upon any private man.

But the wisdom of the law is greater than any man's wisdom; how much more, therefore, than mine! An attack upon the King is considered to be parricide against the state, and the Jury and the witnesses, and even the Judges, are the children. It is fit, on that account, that there should be a solemn pause before we rush to judgment; and what can be a more sublime spectacle of justice than to see a statutable disqualification of a whole nation for a limited period, a fifteen day's *quarantine* before trial, lest the mind should be subject to the contagion of partial affections.*!

From a Prisoner so protected by the benevolence of our institutions, the utmost good faith would, on his part, be due to the public if he had consciousness and reason to reflect upon the obligation.—The

* There must be fifteen days between arraignment and trial.

duty, therefore, devolves on *me*, and, *upon my honour*, it shall be fulfilled. I will employ no artifices of speech.—I claim only the strictest protection of the law for the unhappy man before you.—I should, indeed, be ashamed if I were to say any thing of the rule *in the abstract* by which he is to be judged, which I did not honestly feel; and I am sorry, therefore, that the subject is so difficult to handle with brevity and precision. Indeed, if it could be brought to a clear and simple criterion, which could admit of a dry admission or contradiction, there might be very little difference, *perhaps none at all*, between the Attorney-General and myself, upon the principles which ought to govern your verdict; but this is not possible, and I am, therefore, under the necessity of submitting to you, and to the Judges, for their direction (and at greater length than I wish), how I understand this difficult and momentous subject.

The law, as it regards this most unfortunate infirmity of the human mind, like the law in all its branches, aims at the utmost degree of precision; but there are some subjects, as I have just observed to you, and the present is one of them, upon which it is extremely difficult to be precise. The general principle is clear, but the application is most difficult.

It is agreed by all jurists, and is established by the law of this and every other country, that it is the REASON OF MAN which makes him accountable for

his actions; and that the deprivation of reason acquits him of crime.—This principle is indisputable; yet so fearfully and wonderfully are we made, so infinitely subtle is the spiritual part of our being, so difficult is it to trace with accuracy the effect of diseased intellect upon human action, that I may appeal to all who hear me, whether there are any causes more difficult, or which, indeed, so often confound the learning of the Judges themselves, as when insanity, or the effects and consequences of insanity, become the subjects of legal consideration and judgment. I shall pursue the subject as the Attorney-General has properly discussed it. I shall consider insanity, as it annuls a man's dominion over property; as it dissolves his contracts, and other acts, which otherwise would be binding; and as it takes away his responsibility for crimes. If I could draw the line in a moment between these two views of the subject, I am sure the Judges will do me the justice to believe, that I would fairly and candidly do so; but great difficulties press upon my mind, which oblige me to take a different course.

I agree with the Attorney-General, that the law, in neither civil nor criminal cases, will measure the degrees of men's understandings; and that a *weak* man, however much below the ordinary standard of human intellect, is not only responsible for crimes, but is bound by his contracts, and may exercise dominion over his property. Sir Joseph Jekyll, in the *Duchess of Cleveland's case*, took the clear legal

distinction, when he said, "*The law will not measure the sizes of men's capacities, so as they be*" *COMPOS MENTIS.*"

Lord Coke, in speaking of the expression *NON COMPOS MENTIS*, says, "*Many times, as here, the Latin word expresses the true sense, and calleth him not amens, d-mens, furiosus, lunaticus, fatuus, stultus, or the like, for non compos mentis is the most sure and legal.*" He then says, "*Non compos mentis is of four sorts: first, ideota, which, from his nativity, by a perpetual infirmity, is NON COMPOS MENTIS; secondly, he that by sickness, grief, or other accident, wholly loses his memory and understanding; third, a lunatic that hath sometimes his understanding, and sometimes not; aliquando gaudet lucidis intervallis; and therefore he is called non compos mentis so long as he hath not understanding.*"

But notwithstanding the precision with which this great author points out the different kinds of this unhappy malady, the nature of his work, in this part of it, did not open to any illustration which it can now be useful to consider. In his Fourth Institute he is more particular; but the admirable work of Lord Chief Justice Hale, in which he refers to Lord Coke's Pleas of the Crown, renders all other authorities unnecessary.

Lord Hale says, "*There is a partial insanity of the mind, and a total insanity. The former is either in respect to things, quoad hoc vel illud insanit.*"

“ Some persons, that have a competent use of rea-
 “ son in respect of some subjects, are yet under a
 “ particular dementia in respect of some particular
 “ discourses, subjects, or applications : or else it is
 “ partial in respect of degrees ; and this is the con-
 “ dition of very many, especially melancholy per-
 “ sons, who for the most part discover their defect
 “ in excessive fears and griefs, and yet are not
 “ wholly destitute of the use of reason ; and this
 “ partial insanity seems not to excuse them in the
 “ committing of any offence for its matter capital ;
 “ for doubtless most persons, that are felons of
 “ themselves and others, are under a degree of par-
 “ tial insanity, when they commit these offences.
 “ It is very difficult to define the invisible line that
 “ divides perfect and partial insanity ; but it must
 “ rest upon circumstances duly to be weighed and
 “ considered both by Judge and Jury, lest on the
 “ one side there be a kind of inhumanity towards the
 “ defects of human nature ; or, on the other side,
 “ too great an indulgence given to great crimes.”

Nothing, Gentlemen, can be more accurately
 nor more humanely expressed ; but the application
 of the rule is often most difficult. I am bound, be-
 sides, to admit that there is a wide distinction be-
 tween civil and criminal cases.—If, in the former, a
 man appears, upon the evidence, to be *non compos*
mentis, the law avoids his act, though it cannot be
 traced or connected with the morbid imagination
 which constitutes his disease, and which may be ex-

tremely partial in its influence upon conduct; but to deliver a man from responsibility for crimes, above all, for crimes of great atrocity and wickedness, I am by no means prepared to apply this rule, however well established, when property only is concerned.

In the very recent instance of Mr. Greenwood (which must be fresh in his Lordship's recollection), the rule in civil cases was considered to be settled. That gentleman, whilst insane, took up an idea that a most affectionate brother had administered poison to him.—Indeed, it was the prominent feature of his insanity.—In a few months he recovered his senses.—He returned to his profession as an advocate; was sound and eminent in his practice, and in all respects a most intelligent and useful member of society; but he could never dislodge from his mind the morbid delusion which disturbed it; and under the pressure, no doubt, of that diseased prepossession, he disinherited his brother. The cause to avoid this will was tried here.—We are not now upon the evidence, but upon the principle adopted as the law. The Noble and Learned Judge, who presides upon this trial, and who presided upon that, told the Jury, that if they believed Mr. Greenwood, when he made the will, to have been *insane*, the will could not be supported, whether it had disinherited his brother, or not; that the act, no doubt, strongly confirmed the existence of the false idea which, if believed by the Jury to amount to

madness, would equally have affected his testament, if the brother, instead of being disinherited, had been in his grave; and that, on the other hand, if the unfounded notion did not amount to madness, its influence could not vacate the devise *. This principle of law appears to be sound and reasonable, as it applies to civil cases, from the extreme difficulty of tracing with precision the secret motions of a mind, deprived by disease of its soundness and strength.

Whenever, therefore, a person may be considered *non compos mentis*, all his *civil* acts are void, whether they can be referred, or not, to the morbid impulse of his malady, or even though, to all *visible appearances*, totally separated from it; but I agree with Mr. Justice Tracey, that it is not every man of an idle, frantic appearance and behaviour, who is to be considered as a lunatic, either as it regards obligations or crimes; but that he must appear to the Jury to be *non compos mentis*, in the legal acceptance of the term; and that, not at any *anterior period*, which can have no bearing upon any case whatsoever, but at *the moment* when the contract was entered into, or the crime committed.

The Attorney-General, standing undoubtedly upon the most revered authorities of the law, has laid it down, that to protect a man from *criminal re-*

* N. B. The Jury found for the will; but after a contrary verdict in the Common Pleas, a compromise took place.

responsibility, there must be a **TOTAL deprivation of memory and understanding**. I admit that this is the very expression used, both by Lord Coke and by Lord Hale; but the true interpretation of it deserves the utmost attention and consideration of the Court. If a **TOTAL deprivation of memory** was intended by these great lawyers to be taken in the *literal* sense of the words:—if it was meant, that, to protect a man from punishment, he must be in such a state of prostrated intellect, as not to know his name, nor his condition, nor his relation towards others—that if a husband, he should not know he was married; or, if a father, could not remember that he had children; nor know the road to his house, nor his property in it—then no such madness ever existed in the world. It is **IDECY** alone which places a man in this helpless condition; where, from an *original* mal-organization, there is the human frame alone without the human capacity; and which, indeed, meets the very definition of Lord Hale himself, when, referring to Fitzherbert, he says: “*Idecy or fatuity à nativitate, vel dementia naturalis, is such a one as described by Fitzherbert, who knows not to tell twenty shillings, nor knows his own age, or who was his father.*” But in all the cases which have filled Westminster Hall with the most complicated considerations—the lunatics, and other insane persons who have been the subjects of them, have not only had memory, *in my sense of the expression*—they have not only had the most perfect knowledge and

recollection of all the relations they stood in towards others, and of the acts and circumstances of their lives, but have, in general, been remarkable for subtlety and acuteness. Defects in their reasonings have seldom been traceable—the disease consisting in the delusive sources of thought:—all their deductions within the scope of the malady, being founded upon the *immoveable* assumption of matters as *realities*, either without any foundation whatsoever, or so distorted and disfigured by fancy, as to be almost nearly the same thing as their creation. It is true, indeed, that in some, perhaps in many cases, the human mind is stormed in its citadel, and laid prostrate under the stroke of frenzy; these unhappy sufferers, however, are not so much considered, by physicians, as maniacs; but to be in a state of delirium as from fever. There, indeed, all the ideas are overwhelmed—for reason is not merely disturbed, *but driven wholly from her seat*.—Such unhappy patients are unconscious, therefore, except at short intervals, even of external objects; or, at least, are wholly incapable of considering their relations. Such persons, *and such persons alone* (except idiots), *are wholly deprived of their UNDERSTANDINGS*, in the Attorney-General's seeming sense of that expression. But these cases are not only extremely rare, but never can become the subjects of judicial difficulty. There can be but one judgment concerning them. In other cases, Reason is not driven from her seat, but distraction sits down upon it along with

her, holds her, trembling, upon it, and frightens her from her propriety. Such patients are victims to delusions of the most alarming description, which so overpower the faculties, and usurp so firmly the place of realities, as not to be dislodged and shaken by the organs of perception and sense: in such cases the images frequently vary, but in the same subject are generally of the same terrific character.—Here, too, no judicial difficulties can present themselves; for who could balance upon the judgment to be pronounced in cases of such extreme disease? Another class, branching out into almost infinite subdivisions, under which, indeed, the former, and every case of insanity may be classed, is, where the delusions are not of that frightful character—but infinitely various, and often extremely *circumscribed*; yet where imagination (*within the bounds of the malady*) still holds the most uncontrollable dominion over reality and fact: *and these are the cases which frequently mock the wisdom of the wisest in judicial trials*; because such persons often reason with a subtlety which puts in the shade the ordinary conceptions of mankind: their conclusions are just, and frequently profound; but the *premises from which they reason*, WHEN WITHIN THE RANGE OF THE MALADY, are uniformly false:—not false from any defect of knowledge or judgment; but, because a delusive image, the inseparable companion of real insanity, is thrust upon the subjugated understanding, incapable of resistance, because unconscious of attack.

Delusion, therefore, where there is no frenzy or raving madness, is the true character of insanity ; and where it cannot be predicated of a man standing for life or death for a crime, he ought not, in my opinion, to be acquitted ; and if courts of law were to be governed by any other principle, every departure from sober, rational conduct would be an emancipation from criminal justice. I shall place my claim to your verdict upon no such dangerous foundation.—I must convince you, not only that the unhappy Prisoner was a lunatic, within my own definition of lunacy, but that the act in question was the IMMEDIATE, UNQUALIFIED OFFSPRING OF THE DISEASE. In *civil* cases, as I have already said, the law avoids every act of the lunatic during the period of the lunacy ; although the delusion may be extremely circumscribed ; although the mind may be quite sound in all that is not within the shades of the very partial eclipse ; and although the act to be avoided can in no way be connected with the influence of the insanity ;—but to deliver a lunatic from responsibility to *criminal* justice, above all, in a case of such atrocity as the present, the relation between the disease and the act should be apparent. Where the connexion is doubtful, the judgment should certainly be most indulgent, from the great difficulty of diving into the secret sources of a disordered mind :—but still, I think, that, as a doctrine of law, the delusion and the act should be connected.

You perceive, therefore, Gentlemen, that the

Prisoner, in naming me for his Counsel, has not obtained the assistance of a person who is disposed to carry the doctrine of insanity in his defence, so far as even the books would warrant me in carrying it. Some of the cases, that of Lord Ferrers for instance, which I shall consider hereafter, distinguished from the present, would not, in my mind, bear the shadow of an argument, as a defence against an indictment for murder; I cannot allow the protection of insanity to a man who only exhibits violent passions and malignant resentments, acting upon *real circumstances*; who is impelled to evil from no morbid delusions; but who proceeds upon the ordinary perceptions of the mind.—I cannot consider such a man as falling within the protection which the law gives, and is bound to give, to those whom it has pleased God, for mysterious causes, to visit with this most afflicting calamity.

He alone can be so emancipated, whose disease (call it what you will) consists, not merely in seeing with a prejudiced eye, or with odd and absurd particularities, differing, in many respects, from the contemplations of sober sense, upon the actual existences of things; but, *he only* whose whole reasoning and corresponding conduct, though governed by the ordinary dictates of reason, proceed upon something which has no foundation or existence.

Gentlemen, it has pleased God so to visit the unhappy man before you;—to shake his reason in its citadel;—to cause him to build up as realities, the

most impossible phantoms of the mind, and to be impelled by them as motives *irresistible* : the whole fabric being nothing but the unhappy vision of his disease—existing no where else—having no foundation whatsoever in the very nature of things.

Gentlemen, it has been stated by the Attorney-General, and established by evidence, which I am in no condition to contradict, nor have, indeed, any interest in contradicting, that, when the Prisoner bought the pistol which he discharged at, or *towards* His Majesty, he was well acquainted with the nature and use of it ;—that, as a soldier, he could not but know that in his hands it was a sure instrument of death ;—that, when he bought the gunpowder, he knew it would prepare the pistol for its use ;—that, when he went to the playhouse, he knew he was going there, and every thing connected with the scene, as perfectly as any other person.—I freely admit all this : I admit, also, that every person who listened to his conversation and observed his deportment upon his apprehension, must have given precisely the evidence delivered by His Royal Highness the Duke of York ; and that nothing like insanity appeared to those who examined him.—But what then ? I conceive, Gentlemen, that I am more in the habit of examination, than either that illustrious person, or the witnesses from whom you have heard this account ; yet I well remember (indeed I never can forget it), that since the Noble and Learned Judge has presided in this Court, I examined, for

the greater part of a day, in this very place, an unfortunate gentleman who had indicted a most affectionate brother, together with the keeper of a mad-house at Hoxton, for having imprisoned him as a lunatic; whilst, according to his evidence, he was in his perfect senses. I was, unfortunately, not instructed in what his lunacy consisted, although my instructions left me no doubt of the fact; but, not having the clue, he completely foiled me in every attempt to expose his infirmity. You may believe that I left no means unemployed which long experience dictated; but without the smallest effect. The day was wasted, and the Prosecutor, by the most affecting history of unmerited suffering, appeared to the Judge and Jury, and to a humane English audience, as the victim of the most wanton and barbarous oppression: at last Dr. Sims came into Court, who had been prevented, by business, from an earlier attendance;—and whose name, by the bye, I observe to-day in the list of the witnesses for the Crown. From Dr. Sims I soon learned that the very man whom I had been above an hour examining, and with every possible effort which Counsel are so much in the habit of exerting, believed himself to be *the Lord and Saviour of mankind*; not merely *at the time of his confinement*, which was alone necessary for my defence; *but during the whole time that he had been triumphing over every attempt to surprise him in the concealment of his disease*. I then affected to lament the indecency of my igno-

rant examination, when he expressed his forgiveness, and said, with the utmost gravity and emphasis, in the face of the whole Court, "I AM THE CHRIST;" and so the cause ended. Gentlemen, this is not the only instance of the power of concealing this malady; I could consume the day if I were to enumerate them; but there is one so extremely remarkable, that I cannot help stating it.

Being engaged to attend the assizes at Chester upon a question of lunacy, and having been told that there had been a memorable case tried before Lord Mansfield in this place, I was anxious to procure a report of it; and from that great man himself (who within these walls will ever be revered, being then retired in his extreme old age, to his seat near London, in my own neighbourhood) I obtained the following account of it: "A man of the name of Wood," said Lord Mansfield, "had indicted Dr. Monro for keeping him as a prisoner (I believe in the same mad-house at Hoxton) when he was sane. He underwent the most severe examination by the Defendant's Counsel without exposing his complaint; but Doctor Battye, having come upon the Bench by me, and having desired me to ask him what was become of the PRINCESS whom he had corresponded with in cherry-juice, he showed in a moment what he was. He answered, that there was nothing at all in that, because, having been (as every body knew) imprisoned in a high tower, and being debarred the use of ink, he had no other means of correspondence

but by writing his letters in cherry-juice, and throwing them into the river which surrounded the tower, where the Princess received them in a boat. There existed, of course, no tower, no imprisonment, no writing in cherry-juice, no river, no boat; but the whole the inveterate phantom of a morbid imagination.—I immediately," continued Lord Mansfield, "directed Dr. Monro to be acquitted; but this man, Wood, being a merchant in Philpot Lane, and having been carried through the city in his way to the mad-house, he indicted Dr. Monro over again, for the trespass and imprisonment *in London*, knowing that he had lost his cause by speaking of the Princess at Westminster; and such," said Lord Mansfield, "is the extraordinary subtlety and cunning of madmen, that when he was cross-examined on the trial in London, as he had successfully been before, in order to expose his madness, all the ingenuity of the Bar, and all the authority of the Court, could not make him say a single syllable upon that topic, which had put an end to the Indictment before, although he still had the same indelible impression upon his mind, as he signified to those who were near him; but, conscious that the delusion had occasioned his defeat at Westminster, he obstinately persisted in holding it back *."

Now, Gentlemen, let us look to the application

* This evidence at Westminster was then proved against him by the short-hand writer.

of these cases. I am not examining, *for the present*, whether either of these persons ought to have been acquitted, *if they had stood in the place of the Prisoner now before you*; that is quite a distinct consideration, which we shall come to hereafter.—The direct application of them is *only this*: that if I bring before you such evidence of the Prisoner's insanity as, *if believed to have really existed*, shall, in the opinion of the Court, as the rule for your verdict in point of law, be sufficient for his deliverance, then that you ought not to be shaken in giving full credit to such evidence, notwithstanding the report of those who were present at his apprehension, *who describe him as discovering no symptom whatever of mental incapacity or disorder*; because I have shown you that insane persons frequently appear in the utmost state of ability and composure, even in the highest paroxysms of insanity, except when frenzy is the characteristic of the disease. In this respect, the cases I have cited to you, have the most *decided application*; because they apply to the overthrow of the whole of the evidence (admitting at the same time the truth of it), by which the Prisoner's case can alone be encountered.

But it is said, that whatever delusions may overshadow the mind, every person ought to be responsible for crimes, *who has the knowledge of good and evil*. I think I can presently convince you, that there is something too general in this mode of considering the subject; and you do not, therefore, find

any such proposition in the language of the celebrated writer alluded to by the Attorney-General in his speech. Let me suppose that the character of an insane delusion consisted in the belief that some given person was any brute animal, or an inanimate being (and such cases have existed), and that upon the trial of such a lunatic for murder, you firmly, upon your oaths, were convinced, upon the uncontradicted evidence of an hundred persons, that he believed the man he had destroyed, to have been a potter's vessel; that it was quite impossible to doubt that fact, *although to all other intents and purposes he was sane*; conversing, reasoning, and acting, as men not in any manner tainted with insanity, converse, and reason, and conduct themselves: suppose further, that he believed the man whom he destroyed, but whom he destroyed as a potter's vessel, to be the property of another; and that he had malice against such supposed person, and that he meant to injure him, knowing the act he was doing to be malicious and injurious, and that, in short, he had full knowledge of all the principles of good and evil; yet would it be possible to convict such a person of murder, if, from the influence of his disease, he was ignorant of the relation he stood in to the man he had destroyed, and was utterly *unconscious* that he had struck at the life of a human being? I only put this case, and many others might be brought as examples to illustrate, that the knowledge of good and evil is too general a description.

I really think, however, that the Attorney-General and myself do not, in substance, very materially differ; because, from the whole of his most able Speech, taken together, his meaning may, I think, be thus collected; that where the act which is criminal, is done under the dominion of malicious mischief and wicked intention, although such insanity might exist in a corner of the mind, as might avoid the acts of the delinquent as a lunatic in a civil case, yet that he ought not to be protected, if malicious mischief, and not insanity, had impelled him to the act for which he was criminally to answer; because, in such a case, the act might be justly ascribed to malignant motives, and not to the dominion of disease.—I am not disposed to dispute such a proposition, in a case which would apply to it, and I can well conceive such cases may exist. The question, therefore, which you will have to try, is this: Whether, when this unhappy man discharged the pistol in a direction which convinced, and ought to convince, every person that it was pointed at the person of the King, he meditated mischief and violence to His Majesty, or whether he came to the theatre (*which it is my purpose to establish*) under the dominion of the most melancholy insanity that ever degraded and overpowered the faculties of man. I admit that when he bought the pistol, and the gunpowder to load it, and when he loaded it, and came with it to the theatre, and lastly, when he discharged it; every one of these acts would be overt.

acts of compassing the King's death, if at all or *any* of these periods he was actuated by that *mind and intention*, which would have constituted murder in the case of an individual, if the individual had been actually killed.—I admit also, that the mischievous, and, in this case, the traitorous intention must be inferred from all these acts, unless *I can rebut the inferences by proof*. If I were to fire a pistol towards you, Gentlemen, where you are now sitting, the act would undoubtedly infer the malice. *The whole proof, therefore, is undoubtedly cast upon ME.*

In every case of treason, or murder, which are precisely the same, except that the unconsummated intention in the case of the King, is the same as the actual murder of a private man, the Jury must impute to the person whom they condemn by their verdict, *the motive* which constitutes the crime; and your province to-day will, therefore, be to decide, whether the Prisoner, when he did the act, was under the uncontrollable dominion of insanity, and was impelled to it by a *morbid delusion*; or whether it was the act of a man, who, though occasionally mad, or even at the time not perfectly collected, was yet not actuated by the disease, but by the suggestion of a wicked and malignant disposition.

I admit therefore, freely, that if, after you have heard the evidence which I hasten to lay before you, of the state of the Prisoner's mind, and close up to the very time of this catastrophe, you shall still not

feel yourselves clearly justified in negating the wicked motives imputed by this Indictment, I shall leave you in the hands of the Learned Judges to declare to you the law of the land, and shall not seek to place society in a state of uncertainty by any appeal addressed only to your compassion: I am appointed by the Court to claim for the Prisoner the full protection of the law, but not to misrepresent it in his protection.

Gentlemen, the facts of this melancholy case lie within a narrow compass.

The unfortunate person before you was a soldier. He became so, I believe, in the year 1793—and is now about twenty-nine years of age. He served in Flanders under the Duke of York, as appears by His Royal Highness's evidence; and being a most approved soldier, he was one of those singled out as an orderly man to attend upon the person of the Commander-in-Chief. You have been witnesses, Gentlemen, to the calmness with which the Prisoner has sitten in his place during the trial.—There was but one exception to it.—You saw the emotion which overpowered him when the illustrious person now in Court, took his seat upon the Bench. Can you then believe, from the evidence, for I do not ask you to judge as physiognomists, or to give the rein to compassionate fancy; but can there be any doubt that it was the generous emotion of the mind, on seeing the Prince, under whom he had served with so much bravery and honour? Every man certainly

must judge for himself :—I am Counsel, not a witness, in the cause ; but it is a most striking circumstance, when you find from the Crown's evidence, that when he was dragged through the orchestra under the stage, and charged with an act for which he considered his life as forfeited, he addressed the Duke of York with the same enthusiasm which has marked the demeanour I am adverting to :—Mr. Richardson, who showed no disposition in his evidence to help the Prisoner, but who spoke with the calmness and circumspection of truth, and who had no idea that the person he was examining was a lunatic, has given you the account of the burst of affection on his first seeing the Duke of York, against whose father and sovereign he was supposed to have had the consciousness of treason.—The King himself, whom he was supposed to have so malignantly attacked, never had a more gallant, loyal, or suffering soldier. His gallantry and loyalty will be proved ; his sufferings speak for themselves.

About five miles from Lisle, upon the attack made on the British army, this unfortunate soldier was in the fifteenth light dragoons, in the thickest of the ranks, exposing his life for his Prince, whom he is supposed to-day to have sought to murder :—the first wound he received is most materially connected with the subject we are considering ; you may see the effect of it now *. The point of a sword was im-

* Mr. Erskine put his hand to the Prisoner's head, who stood by him at the Bar of the Court.

pelled against him with all the force of a man urging his horse in battle. When the Court put the Prisoner under my protection, I thought it my duty to bring Mr. Cline to inspect him in Newgate; and it will appear by the evidence of that excellent and conscientious person, who is known to be one of the first anatomists in the world, that from this wound one of two things must have happened: either, that by the immediate operation of surgery the displaced part of the skull must have been taken away, or been forced inward on the brain. The second stroke, also, speaks for itself: you may now see its effects.—(*Here Mr. Erskine touched the head of the Prisoner.*) He was cut across all the nerves which give sensibility and animation to the body, and his head hung down almost dissevered, until by the act of surgery it was placed in the position you now see it; but thus, almost destroyed, he still recollected his duty, and continued to maintain the glory of his country, when a sword divided the membrane of his neck where it terminates in the head; yet he still kept his place though his helmet had been thrown off by the blow which I secondly described, when by another sword he was cut into the very brain—you may now see its membrane uncovered. Mr. Cline will tell you that he examined these wounds, and he can better describe them; I have myself seen them, but am no surgeon: from his evidence you will have to consider their consequences. It may be said that many soldiers receive grievous wounds without their producing insanity.

So they may undoubtedly ; but we are here upon *the fact*. There ~~was a~~ discussion the other day, on whether a man, who had been seemingly hurt by a fall beyond remedy, could get up and walk : the people around said it was impossible ; but he did get up and walk, and so there was an end to the impossibility. The effects of the Prisoner's wounds were known by the *immediate* event of insanity, and Mr. Cline will tell you that it would have been strange indeed if any other event had followed. We are not here upon a case of insanity arising from the spiritual part of man, as it may be affected by hereditary taint—by intemperance, or by violent passions, the operations of which are various and uncertain ; but we have to deal with a species of insanity more resembling what has been described as ideocy, proceeding from original mal-organization. *There* the disease is, from its very nature, *incurable* ; and so where a man (*like the Prisoner*) has become insane from *violence to the brain, which permanently affects its structure*, however such a man may appear occasionally to others, his disease is *immovable* ; and if the Prisoner, therefore, were to live a thousand years, he *never* could recover from the consequence of that day.

But this is not all. Another blow was still aimed at him, which he held up his arm to avoid, when his hand was cut into the bone. It is an afflicting subject, Gentlemen, and better to be spoken of by those who understand it ; and, to end all further description, he was then thrust almost through and

through the body with a bayonet, and left in a ditch amongst the slain.

He was afterwards carried to an hospital, where he was known by his tongue to one of his countrymen, who will be examined as a witness, who found him, not merely as a wounded soldier deprived of the powers of his body, but bereft of his senses for ever.

He was affected, from the very beginning, with that species of madness, which, from violent agitation, fills the mind with the most inconceivable imaginations, wholly unfitting it for all dealing with human affairs according to the sober estimate and standard of reason. He imagined that he had constant intercourse with the almighty Author of all things; that the world was coming to a conclusion; and that, like our blessed Saviour, he was to sacrifice himself for its salvation; and so obstinately did this morbid image continue, that you will be convinced he went to the theatre to perform, as he imagined, that blessed sacrifice; and, because he would not be guilty of suicide, though called upon by the imperious voice of Heaven, he wished that by the appearance of crime his life might be taken away from him by others. This bewildered, extravagant species of madness appeared immediately after his wounds on his first entering the hospital, and on the very same account he was discharged from the army on his return to England, which the Attorney-Ge-

neral very honourably and candidly seemed to intimate.

To proceed with the proofs of his insanity *down to the very period of his supposed guilt*. This unfortunate man before you, is the father of an infant of eight months; and I have no doubt, that if the boy had been brought into Court (*but this is a grave place for the consideration of justice, and not a theatre for stage effect*)—I say, I have no doubt whatever, that if this poor infant had been brought into Court, you would have seen the unhappy father wrung with all the emotions of parental affection: yet, upon the Tuesday preceding the Thursday when he went to the playhouse, you will find his disease still urging him forward, with the impression *that the time was come*, when he must be destroyed for the benefit of mankind; and in the confusion, or rather *delirium* of this wild conception, he came to the bed of the mother, who had this infant in her arms, and endeavoured to dash out its brains against the wall. The family was alarmed—and the neighbours being called in, the child was, with difficulty, rescued from the unhappy parent, who, in his madness, would have destroyed it.

Now let me, for a moment, suppose that he had succeeded in the accomplishment of his insane purpose; and the question had been, whether he was guilty of murder. Surely the affection for this infant, up to the very moment of his distracted violence, would have been conclusive in his favour: but

not more so than his loyalty to the King, and his attachment to the Duke of York, as applicable to the case before us ; yet at that very period, even of extreme distraction, he conversed as rationally on all other subjects, as he did to the Duke of York at the theatre. The Prisoner knew perfectly that he was the husband of the woman, and the father of the child ;—the tears of affection ran down his face at the very moment that he was about to accomplish its destruction ; but during the whole of this scene of horror, he was not at all deprived of memory, in the Attorney-General's sense of the expression : he could have communicated, at that moment, every circumstance of his past life, and every thing connected with his present condition, *except only the quality of the act he was meditating*. In that, he was under the over-ruling dominion of a morbid imagination, and conceived that he was acting against the dictates of nature, in obedience to the superior commands of Heaven, which had told him, that the moment he was dead, and the infant with him, all nature was to be changed, and all mankind were to be redeemed by his dissolution.—There was not an idea in his mind, from the beginning to the end, of the destruction of the King ; on the contrary, he always maintained his loyalty—lamented that he could not go again to fight his battles in the field—and it will be proved, that only a few days before the period in question, being present when a song was sung, indecent, as it regarded the person and condition of

His Majesty, he left the room with loud expressions of indignation, and immediately sung, God save the King, with all the enthusiasm of an old soldier, who had bled in the service of his country.

I confess to you, Gentlemen, that this last circumstance, which may, to some, appear insignificant, is, in my mind, most momentous testimony; because, if this man had been in the habit of associating with persons inimical to the government of our country, so that mischief might have been fairly argued to have mixed itself with madness (which, by the bye, it frequently does); if it could in any way have been collected, that from his disorder, more easily inflamed and worked upon, he had been led away by disaffected persons, to become the instrument of wickedness; if it could have been established that such had been his companions and his habits, I should have been ashamed to lift up my voice in his defence.—I should have felt, that, however his mind might have been weak and disordered, yet if his understanding sufficiently existed, to be methodically acted upon as an instrument of malice, I could not have asked for an acquittal: but you find, on the contrary, in the case before you, that, notwithstanding the opportunity which the Crown has had, and which, upon all such occasions, it justly employs to detect treason, either against the person of the King, or against his government; *not one witness* has been able to fix upon the Prisoner before you, any one companion, of even a doubtful

description, or any one expression from which disloyalty could be inferred; whilst the whole history of his life repels the imputation. His courage in defence of the King and his dominions, and his affection for his son, in such unanswerable evidence, all speak aloud against the presumption that he went to the theatre with a mischievous intention.

To recur again to the evidence of Mr. Richardson, who delivered most honourable and impartial testimony: I certainly am obliged to admit, that what a prisoner says for himself, when coupled at the very time with an overt act of wickedness, is no evidence whatever to alter the obvious quality of the act he has committed.—If, for instance, I who am now addressing you, had fired the same pistol towards the box of the King—and, having been dragged under the orchestra, and secured for criminal justice, I had said, that I had no intention to kill the King, but was weary of my life, and meant to be condemned as guilty; would any man who was not himself insane, consider that as a defence? Certainly not; because it would be without the whole foundation of the Prisoner's previous condition; part of which it is even difficult to apply closely and directly by strict evidence, without taking his undoubted insanity into consideration; because it is his unquestionable insanity which alone stamps the effusions of his mind with sincerity and truth.

The idea which had impressed itself, but in most confused images, upon this unfortunate man, was,

that he must be destroyed, but ought not to destroy himself. He once had the idea of firing over the King's carriage in the street; but then he imagined he should be immediately killed, which was not the mode of propitiation for the world—and as our Saviour, before his passion, had gone into the garden to pray, this fallen and afflicted being, after he had taken the infant out of bed to destroy it, returned also to the garden, saying, as he afterwards said to the Duke of York, “that all was not over—that a great work was to be finished:”—and there he remained in prayer, the victim of the same melancholy visitation.

Gentlemen, these are the facts, freed from even the possibility of artifice or disguise; because the testimony to support them will be beyond all doubt; and in contemplating the law of the country, and the precedents of its justice, to which they must be applied, I find nothing to challenge or question—I approve of them throughout—I subscribe to all that is written by Lord Hale—I agree with all the authorities, cited by the Attorney-General, from Lord Coke; but above all, I do most cordially agree in the instance of convictions by which he illustrated them in his able address. I have now lying before me the case of Earl Ferrers: unquestionably there could not be a shadow of doubt, and none appears to have been entertained, of his guilt.—I wish, indeed, nothing more than to contrast the two cases; and so far am I from disputing either the principle of that condemnation, or the evidence that was the

foundation of it, that I invite you to examine whether any two instances in the whole body of the criminal law, are more diametrically opposite to each other, than the case of Earl Ferrers and that now before you. Lord Ferrers was divorced from his wife by act of Parliament; and a person of the name of Johnson, who had been his steward, had taken part with the lady in that proceeding, and had conducted the business in carrying the act through the two Houses. Lord Ferrers consequently wished to turn him out of a farm which he occupied under him; but his estate being in trust, Johnson was supported by the trustees in his possession: there were, also, some differences respecting coal-mines; and in consequence of both transactions, Lord Ferrers took up the most violent resentment against him. Let me here observe, Gentlemen, that this ~~was~~ not a resentment founded upon any *illusion*; not a resentment forced upon a distempered mind by fallacious images, but depending upon *actual circumstances and real facts*; and acting like any other man under the influence of malignant passions, he repeatedly declared that he would be revenged on Mr. Johnson, particularly for the part he had taken in depriving him of a contract respecting the mines,

Now suppose Lord Ferrers could have showed that no difference with Mr. Johnson had ever existed regarding his wife at all—that Mr. Johnson had never been his steward—and that he had only, from delusion, believed so when his situation in life was quite different.

Suppose, further, that an *illusive imagination* had alone suggested to him that he had been thwarted by Johnson in his contract for these coal-mines, there never having been any contract at all for coal-mines; in short, that the whole basis of his enmity was without any foundation in nature, and had been shown to have been a *morbid image* imperiously fastened upon his mind.—Such a case as that would have exhibited a character of insanity in Lord Ferrers, extremely different from that in which it was presented by the evidence to HIS PEERS. Before THEM, he only appeared as a man of turbulent passions; whose mind was disturbed by no fallacious images of things without existence; whose quarrel with Johnson was founded upon *no illusions*, but upon existing facts; and whose resentment proceeded to the fatal consummation with all the ordinary indications of mischief and malice; and who conducted his own defence with the greatest dexterity and skill. WHO THEN COULD DOUBT THAT LORD FERRERS WAS A MURDERER? When the act was done, he said, “I am glad I have done it. He was a villain, and I am revenged;” but when he afterwards saw that the wound was probably mortal, and that it involved consequences fatal to himself, he desired the surgeon to take all possible care of his patient—and, conscious of his crime, kept at bay the men who came with arms to arrest him; showing, from the beginning to the end, nothing that does not generally accompany the crime for which he was condemned. He was

proved, to be sure, to be a man subject to unreasonable prejudices, addicted to absurd practices; and agitated by violent passions; but the act was not done under the dominion of uncontrollable disease; and whether the mischief and malice were substantive, or marked in the mind of a man whose passions bordered upon, or even amounted to insanity, it did not convince the Lords, that, under all the circumstances of the case, he was not a fit object of criminal justice.

In the same manner, Arnold, who shot at Lord Onslow, and who was tried at Kingston soon after the Black Act passed on the accession of George I. Lord Onslow having been very vigilant as a magistrate in suppressing clubs, which were supposed to have been set on foot to disturb the new government, Arnold had frequently been heard to declare, that Lord Onslow would ruin his country; and although he appeared, from the evidence, to be a man of most wild and turbulent manners, yet the people round Guildford, who knew him, did not, in general, consider him to be insane.—His Counsel could not show, that any morbid *delusion* had ever overshadowed his understanding.—They could not show, *as I shall*, that just before he shot at Lord Onslow, he had endeavoured to destroy his own beloved child. *It was a case of human resentment.*

I might instance, also, the case of Oliver, who was indicted for the murder of Mr. Wood, a potter, in Staffordshire. Mr. Wood had refused his daugh-

ter to this man in marriage. My friend Mr. Telford was Counsel for him at the assizes. He had been employed as a surgeon and apothecary by the father, who forbid him his house, and desired him to bring in his bill for payment; when, in the agony of disappointment, and brooding over the injury he had suffered, on his being admitted to Mr. Wood to receive payment, he shot him upon the spot. The trial occupied great part of the day; yet, for my own part, I cannot conceive that there was any thing in the case for a Jury to deliberate on.—He was a man acting upon *existing facts*, and upon *human resentments* connected with them. He was at the very time carrying on his business, which required learning and reflection, and, indeed, a reach of mind beyond the ordinary standard, being trusted by all who knew him, as a practiser in medicine. Neither did he go to Mr. Wood's under the influence of *illusion*; but he went to destroy the life of a man who was placed exactly in the circumstances which the mind of the criminal represented him. He went to execute vengeance on him for refusing his daughter. In such a case there might, no doubt, be passion approaching to frenzy; but there wanted that characteristic of madness to emancipate him from criminal justice.

There was another instance of this description in the case of a most unhappy woman, who was tried in Essex for the murder of Mr. Errington, who had seduced and abandoned her and the children she had

borne to him. It must be a consolation to those who prosecuted her, that she was acquitted, as she is at this time in a most undoubted and deplorable state of insanity; but I confess, if I had been upon the Jury who tried her, I should have entertained great doubts and difficulties: for although the unhappy woman had before exhibited strong marks of insanity arising from grief and disappointment; yet she acted upon *facts and circumstances*, which had an *existence*, and which were calculated, upon the ordinary principles of human action, to produce the most violent resentment. Mr. Errington having just cast her off, and married another woman, or taken her under his protection, her jealousy was excited to such a pitch as occasionally to overpower her understanding; but, when she went to Mr. Errington's house, where she shot him, she went with the express and deliberate purpose of shooting him. That fact was unquestionable; she went there with a resentment long rankling in her bosom, bottomed on an existing foundation; she did not act under a *delusion*, that he had deserted her when he had not, but took revenge upon him for an actual desertion; but still the Jury, in the humane consideration of her sufferings, pronounced the insanity to be predominant over resentment, and they acquitted her.

But let me suppose (which would liken it to the case before us), that she had never cohabited with Mr. Errington; that she never had had children by him; and, consequently, that he neither had, nor

could possibly have deserted or injured her.—Let me suppose, in short, that she had never seen him in her life, but that her resentment had been founded on the morbid delusion that Mr. Errington, who had never seen her, had been the author of all her wrongs and sorrows; and that, under that *diseased* impression, she had shot him. If that had been the case, Gentlemen, she would have been acquitted upon the opening, and no Judge would have sat to try such a cause: the *act itself* would have been decisively characteristic of madness, because, being founded upon nothing existing, it could not have proceeded from malice, which the law requires to be charged and proved, in every case of murder, as the foundation of a conviction.

Let us now recur to the cause we are engaged in, and examine it upon those principles by which I am ready to stand or fall, in the judgment of the Court.

You have a man before you who will appear, upon the evidence, to have received those almost deadly wounds which I described to you, producing the immediate and immoveable effects which the eminent surgeon, whose name I have mentioned, will prove that they could not but have produced; it will appear, that from that period he was visited with the severest paroxysms of madness, and was repeatedly confined with all the coercion which it is necessary to practise upon lunatics; yet what is quite decisive against the imputation of treason against the person

of the King, his loyalty never forsook him.—Sane or insane, it was his very characteristic to love his sovereign and his country; although the delusions which distracted him were sometimes, *in other respects*, as contradictory as they were violent.

Of this inconsistency there was a most striking instance on only the Tuesday before the Thursday in question, when it will be proved, that he went to see one Truilet, who had been committed by the Duke of Portland as a lunatic. This man had taken up an idea that our Saviour's second advent, and the dissolution of all human things, were at hand; and conversed in this strain of madness: this mixing itself with the insane delusion of the Prisoner, he immediately broke out upon the subject of his own propitiation and sacrifice for mankind, although only the day before he had exclaimed, that the Virgin Mary was a whore; that Christ was a bastard; that God was a thief; and that he and this Truilet were to live with him at White Conduit House, and there to be enthroned together. His mind, in short, was overpowered and overwhelmed with distraction.

The charge against the Prisoner is the overt act of compassing the death of the King, in firing a pistol at His Majesty—an act which only differs from murder inasmuch as the bare compassing is equal to the accomplishment of the malignant purpose; and it will be your office, under the advice of the Judge, to decide by your verdict to which of the two impulses of the mind you refer the act in question: you

will have to decide, whether you attribute it wholly to mischief and malice, or wholly to insanity, or to the one mixing itself with the other. If you find it attributable to mischief and malice *only*, LET THE MAN DIE. The law demands his death for the public safety.—If you consider it as conscious malice and mischief mixing itself with insanity, I leave him in the hands of the Court, to say how he is to be dealt with; it is a question too difficult for me.—I do not stand here to disturb the order of society, or to bring confusion upon my country; but, if you find that the act was committed wholly under the dominion of insanity; if you are satisfied that he went to the theatre contemplating his own destruction only; and that, when he fired the pistol, he did not *maliciously* aim at the person of the King—you will then be bound, even upon the principle which the Attorney-General himself humanely and honourably stated to you, to acquit this most unhappy Prisoner.

If, in bringing these considerations hereafter to the standard of the evidence, any doubts should occur to you on the subject, the question for your decision will then be, which of the two alternatives is the most probable—a duty which you will perform by the exercise of that reason of which, for wise purposes, it has pleased God to deprive the unfortunate man whom you are trying; your sound understandings will easily enable you to distinguish *infirmities*, which are *misfortunes*, from *motives*, which

are crimes. Before the day ends the evidence will be decisive upon this subject.

There is, however, another consideration which I ought distinctly to present to you ; because I think that more turns upon it than any other view of the subject : namely, whether the Prisoner's defence can be impeached for artifice or fraud ; because I admit, that if, at the moment when he was apprehended, there can be fairly imputed to him any pretence or counterfeit of insanity, it would taint the whole case, and leave him without protection ; but for such a suspicion there is not even a shadow of foundation.—It is repelled by the whole history and character of his disease, as well as of his life, independent of it. If you were trying a man under the Black Act, for shooting at another, and there was a doubt upon the question of malice ; would it not be important, or rather decisive evidence, that the Prisoner had no resentment against the Prosecutor—but that, on the contrary, he was a man whom he had always loved and served ? Now the Prisoner was maimed, cut down, and destroyed, in the service of the King.

Gentlemen, another reflection presses very strongly on my mind, which I find it difficult to suppress. In every state there are political differences and parties, and individuals disaffected to the system of government under which they live as subjects. There are not many such, I trust, in this country ; but whether there are many or any of such persons,

there is one circumstance which has peculiarly distinguished His Majesty's life and reign, and which is in itself as a host in the Prisoner's defence :—since, amidst all the treasons and all the seditions which have been charged on reformers of government as conspiracies to disturb it, no hand or voice has been lifted up against the person of the King : there have, indeed, been unhappy lunatics who, from ideas too often mixing themselves with insanity, have intruded themselves into the palace—but no malicious attack has ever been made upon the King, to be settled by a trial : His Majesty's character and conduct have been a safer shield than guards or than laws.—Gentlemen, I wish to continue to that sacred life that best of all securities ; I seek to continue it under that protection where it has been so long protected.—We are not to do evil that good may come of it ; we are not to stretch the laws to hedge round the life of the King with a greater security than that which the Divine Providence has so happily realized.

Perhaps there is no principle of religion more strongly inculcated by the sacred Scriptures than by that beautiful and encouraging lesson of our Saviour himself upon confidence in the divine protection :
“ Take no heed for your life, what ye shall eat, or
“ what ye shall drink, or wherewithal ye shall be
“ clothed ; but seek ye first the kingdom of God,
“ and all these things shall be added unto you.” By
which it is undoubtedly not intended that we are to

disregard the conservation of life, or to neglect the means necessary for its sustentation; nor that we are to be careless of whatever may contribute to our comfort and happiness—but that we should be contented to receive them as they are given to us, and not seek them in the violation of the rule and order appointed for the government of the world.—On this principle nothing can more tend to the security of His Majesty and his government, than the scene which this day exhibits in the calm, humane, and impartial administration of justice;—and if, in my part of this solemn duty, I have in any manner trespassed upon the just security provided for the public happiness, I wish to be corrected.—I declare to you, solemnly, that my only aim has been to secure for the Prisoner at the Bar, whose life and death are in the balance, that he should be judged rigidly by the evidence and the law.—I have made no appeal to your passions—you have no right to exercise them. This is not even a case in which, if the Prisoner be found guilty, the royal mercy should be counselled to interfere: he is either an accountable being, or not accountable; if he was *unconscious* of the mischief he was engaged in, the law is a corollary, and he is not guilty; but if, when the evidence closes, you think he was conscious, and maliciously meditated the treason he is charged with, it is impossible to conceive a crime more vile and detestable; and I should consider the King's life to be

ill attended to, indeed, if not protected by the full vigour of the laws, which are watchful over the security of the meanest of his subjects. It is a most important consideration, both as it regards the Prisoner, and the community of which he is a member.—Gentlemen, I leave it with you.

S P E E C H

FOR

GEORGE STRATTON, HENRY BROOKE,
CHARLES FLOYER, AND GEORGE
MACKAY, ESQUIRES;

AS DELIVERED IN THE COURT OF KING'S BENCH,
ON THE 5TH DAY OF FEBRUARY 1780.

THE following Speech was one of the earliest of Lord Erskine's appearances at the Bar, having been delivered in the Court of King's Bench on the 5th of February 1780. It was not comprehended in the former volumes, because the subject did not range within the title of that collection.

Time now begins to cast into the shade a proceeding which occupied at the moment a great deal of public interest and attention, viz. the arrest and imprisonment of Lord Pigot, Governor of Madras, by the Majority of the Council of that settlement, in the year 1776.

On their recall to Europe by the Directors of the East India Company, a motion was made in the House of Commons, for their prosecution by the Attorney-General, for a high misdemeanor.

Admiral Pigot, the brother of Lord Pigot, being at that time a member of the House, and a most amiable man, connected in political life with the Opposition party in Parliament, an extraordinary degree of acrimony arose upon the subject, and the House of Commons came to a resolution to prosecute Messrs. Stratton, and others, in the Court of King's Bench; and an Information was accordingly filed against them by the Attorney-General. They were defended by Mr. Dunning, and the other leading advocates of that time, but were found guilty; and, on their being brought up to receive the judgment of the Court, Mr. Erskine, who was then only junior Counsel, made the following Speech in mitigation of their punishment.

The principle of the mitigation, as maintained by Mr. Erskine, may be thus shortly described. Lord Pigot, considering himself, as President of the Government of Madras, to be an integral part of it, independent of the Council, refused to put a question for decision by the Board, which the members of the Council contended it was his duty ministerially to have done; and he also unduly suspended two of them, to make up a majority in favour of his proceedings. This act of Lord Pigot was held by the Majority of the Council to be a subversion and usurpation of the government, which they contended was vested in the President and Council, and not in the President only; and to vindicate the powers of the government, thus claimed to reside in them, they caused Lord

Pigot to be arrested and suspended, and directed the act of the Majority of Council, which Lord Pigot refused to execute, to be carried into execution. It was, of course, admitted that this act was not legally justifiable ; that the Defendants were properly convicted, and must, therefore, receive some punishment from the Court ; but it was contended in the following Speech, that the Court was bound to remember and respect the principles which governed our ancestors at the Revolution, and which had dictated so many acts of indemnity by Parliament, when persons, impelled by imminent necessity, had disobeyed the laws.

The Defendants were only fined one thousand pounds, without any sentence of imprisonment.

SPEECH
 FOR THE
COUNCIL OF MADRAS,
 IN MITIGATION OF PUNISHMENT.

NEVER BEFORE PRINTED.

MY LORD,

I REALLY do not know how to ask, or even to expect, the attention of the Court ; I am sure it is no gratification to me, to try your Lordships' patience on a subject so completely exhausted ; I feel, besides, that the array of Counsel assembled on this occasion, gives an importance and solemnity to the conviction which it little deserves, and carries the air of a painful resistance of an expected punishment, which it would be a libel on the wisdom and justice of the Court to expect.

But in causes, that, from their public nature, have attracted the public notice, and in which public prejudices have been industriously propagated and inflamed, it is very natural for the objects of them to feel a pleasure in seeing their actions (if they will bear a naked inspection) repeatedly stripped of the

disguise with which the arts of their enemies had covered them, and to expect their Counsel to be, as it were, the heralds of their innocence, even after the minds of the Judges are convinced. They are apt, likewise, and with some reason, to think, that, in *this* stage of a prosecution, surplusage is less offensive, the degree of punishment not being reducible to a point like a legal justification, but subject to be softened and shaded away by the variety of views in which the same facts may be favourably and justly presented, both to the understanding and the heart. Such feelings, my Lord, which I more than guess are the feelings of my injured Clients, must be my apology for adding any thing to what my learned leaders have already, I think, unanswerably urged in their favour. It will be, however, unnecessary for me to fatigue your Lordship with a minute recapitulation of the facts; I shall confine myself to the prominent features of the cause.

The Defendants are convicted of having assumed to themselves the power of the Government of Madras, and with having assaulted and imprisoned Lord Pigot. I say, they are convicted of *that*, because, although I am aware that the general verdict of Guilty includes, likewise, the truth of the first count of the Information, which charges the obstruction of Lord Pigot in carrying into execution the specific orders of the Company, yet it is impossible that the general verdict can at all embarrass the Court in pronouncing judgment, it being notorious

on the face of the evidence, first, that there were no direct or specific orders of the Company touching the points which occasioned either the original or final differences, the Rajah of Tanjore being, before the disputes arose, even beyond the letter of the instructions, restored and secured. Secondly, that the instructions, whatever they were, or however to be construed, were not given to the single construction of Lord Pigot, but to him *and his Council, like all the other general instructions of that Government.*

The Company inclined that the Rajah of Tanjore should be restored without infringing the rights of the Nabob of the Carnatic; but *how* such restoration and security of the Rajah could, or was to be effected without the infringement of those rights of the Nabob which were not to be violated, the Company did not leave to the single discretion of Lord Pigot, but to the determination of the ordinary powers of the Government of Fort Saint George, acting to the best of their understandings, responsible only, like all other magistrates and rulers, for the purity of their intentions.

It is not pretended that the Company's instructions directed the Rajah's security to be effected by the residence of a civil chief and council in Tanjore, or by any other civil establishment whatsoever: on the contrary, they disavow such appropriation of any part of the revenues of that country; *yet the resisting a civil establishment in the person of Lord Pigot's*

son-in-law, Mr. Russel, destined too by the Company for a different and incompatible service, is the specific obstruction which is the burden of the first count of the Information, and which is there attempted to be brought forward as an aggravation of the assumption of the general powers of the government; the obstruction of what was not only not ordered by the Company, but of which their orders implied, and in public council were admitted by one of Lord Pigot's adherents to imply, a disapprobation and prohibition.

The claims of Mr. Benfield, the subject of so much slanderous declamation without proof, or attempt of proof, and, what is more extraordinary, without even charge or accusation, are subject to the same observations: the orders to restore the Rajah to the possession of his country, certainly did not express, and, if my judgment does not mislead me, could not imply, a restitution of the crops sown with the Prince's money, advanced to the inhabitants on the credit of the harvest, without which, universal famine would have ensued.

Had the Nabob, indeed, seized upon Tanjore in defiance of the Company, or even without its countenance and protection, he would, no doubt, have been a *mala fide* possessor *quoad* all transactions concerning it with the Company's servants, whatever the justice of his title to it might in reality have been; and the Company's governors, in restoring the Rajah, paying no respect to such usurped possession,

would have been justifiable in telling any European who had lent his money on the security of Tanjore—Sir, you have lent your money with your eyes open, to a person, whose title you knew not to be ratified by our approbation, and we cannot, therefore, consider either his claim or yours derived from it. But when the Nabob was put into possession by the Company's troops; when that possession, so obtained, was ratified in Europe, at least by the silence of the Company, no matter whether wisely or unwisely, justly or unjustly; and, after the Nabob had been publicly congratulated upon such possession, by the King's plenipotentiary in the presence of all the neighbouring princes in India; I confess I am at a loss to discover the *absurdity* (as it has been called) of the Nabob's pretensions; and it must be remembered, that Mr. Benfield's derivative title was not the subject of dispute, but the title of the Nabob, his principal, from whence it was derived; I am, therefore, supported by the report of the evidence, in saying, that it does not appear that the differences in Council arose, were continued, or brought to a crisis, on points where Lord Pigot had the Company's orders, either express or implied, to give any weight to his single opinion beyond the ordinary weight allotted to it by the constitution of the settlement, so as to justify the Court to consider the dissent of the Majority from *his measures*, to be either a criminal resistance of the President,

or a disobedience of the Company's specific or general instructions.

Thus perishes the first count of the Information, even if it had been matter of charge! But much remains behind. I know it is not enough that the Company's orders were not specific touching any of the points on which the differences arose, or that they were silent touching the property of the crop of Tanjore, or that the Nabob's claim to it had the semblance, or even the reality of justice; I admit that it is not sufficient that the Defendants had the largest and most liberal discretion to exercise, if that discretion should appear to have been warped by bad, corrupt, or selfish motives; I am aware, that it would be no argument to say, that the acts charged upon them were done in resistance of Lord Pigot's illegal subversion, if it could be replied upon me, and that reply be supported by evidence, that such subversive acts of Lord Pigot, though neither justifiable nor legal, were in laudable opposition to their corrupt combinations. I freely admit that, if such a case were established against me, I should be obliged to abandon their defence; because I could apply none of the great principles of government to their protection; but, if they are clear of such imputations, then I *can* and *will* apply them *all*.

My Lord, of this bad intention there is no proof; no proof did I say? there is no charge!—I cannot reply to *slander* here. I will not debase the purity of the Court by fighting with the phantoms of pre-

judice and party, that are invisible to the sedate and sober eye of justice ! If it had been a private cause, I would not have suffered my Clients, as far as my advice could have influenced, to have filed a single affidavit in support of that integrity which no complaint attached upon, and which no evidence had impeached ; but, since they were bound like public victims, and cast into this furnace, we wished them to come forth pure and white ; their innocence is, therefore, witnessed before your Lordships, and before the world, by their most solemn oaths ; and it is surely no great boon, to ask credit for facts averred under the most sacred obligations of religion, and subject to criminal retribution *even here*, which you are bound, in the absence of proof, not only in duty as Judges, but in charity as men, to believe without any oaths at all.

They have denied every corrupt motive and purpose, and every interest, directly or indirectly, with Mr. Benfield, or his claims.—But, says Mr. Rous, Benfield was a man of straw set up by *the Nabob* ; be it so ;—they have positively sworn that they had no interest, directly or indirectly, in the claims of *the Nabob himself* ; no interest, directly or indirectly, in the property of the crop of Tanjore ; no interest, directly or indirectly, beyond their duty, in the preference of Colonel Stuart's appointment to Mr. Russel's ; nor any interest, direct or indirect, in any one act which is the subject of the prosecution, or which can, by the most collateral direction, be

brought to bear upon it. Such are the affidavits ; and, if they be defective, the defect is in us. They protested their innocence to us, their Counsel, and, telling us that there was no form in which language could convey asseverations of the purity of their motives, which they could not with a safe conscience subscribe to, they left it *to us* to frame them in terms to exclude all evasion.

But *circumstances* come in aid of their credit stronger than all oaths : men may swear falsely ; men may be perjured, though a court of justice cannot presume it ; but human nature cannot be perjured. They did not do the very thing, when they got the government for which they are supposed to have usurped it. The history of the world does not afford an instance of men wading through guilt for a purpose which, when within their grasp, they never seized or looked that way it lay.

When Mr. Benfield first laid his claims before the Board, Lord Pigot was absent in Tanjore, and Mr. Stratton was the legal governor during his absence, who might therefore have, in strict regularity, proceeded to the discussion of them ; *but he referred them back to Lord Pigot, and postponed that discussion till his return* ; when, on that discussion, they were declared valid by a legal majority, they neither forced them, nor threatened to force them on the Rajah, but only recommended it to him to do justice, leaving the time and the manner to himself ; and, when at last they assumed the govern-

ment, they did not change their tone with their power ; the Rajah was left unrestrained as before, and, *at this hour*, the claims remain in the same situation in which they stood at the commencement of the disputes ; neither the Nabob nor Mr. Benfield have derived the smallest advantage or support from the revolution in the government.

This puts an end to all discussion of Indian politics, which have been artfully introduced to puzzle and perplex the simple merits of this cause ; I have no more to do with the first or second *Tanjore* war, than with the first or second *Carthaginian* war ; I am sorry, however, my absence yesterday in the House of Commons prevented me from hearing the history of them, because, I am told, Mr. Rous spoke with great ability, and, I am convinced from what I know of his upright temper, with a zeal, that, for the moment, justified what he said to his own bosom ; but, if I am not misinformed, his zeal was his only brief ; his imagination and resentment spurned the fetters both of fact and accusation, and his acquaintance with Indian affairs enabled him to give a variety to the cause, by plausible circumstances, beyond the reach of vulgar, ignorant malice to invent. It was calculated to do much mischief, for it was too long to be remembered, and too unintelligible to be refuted ; yet I am contented to demand judgment on my Clients on Mr. Rous's terms : he tells your Lordship, that their intentions cannot be known till that time when the se-

crets of all human hearts shall be revealed, and then, in the very same breath, he calls for a punishment as if they were revealed already. It is a new, ingenious, and summary mode of proceeding—*festinum remedium*, an assize of conscience.—If it should become the practice, which, from the weight of my Learned Friend, I have no manner of doubt it will, we shall hear such addresses to Juries in criminal courts as this :—Gentlemen, I am Counsel for the prosecution, and I must be candid enough to admit that the charge is not proved against the Defendants ; there is certainly no legal evidence before you to entitle the Crown to your verdict ; but, as there is little reason to doubt that they are guilty, and as this deficiency in the evidence will probably be supplied at the day of judgment, you are well warranted in convicting them ; and if, when the day of judgment comes, both you and I should turn out to be mistaken, they may move for a new trial.

This was the *general* argument of guilt ; and, in the *particulars*, the reasoning was equally close and logical. How, says Mr. Rous, can it be believed that the Tanjore crop was not the corrupt foundation of the Defendants' conduct, when it appears from day to day, on the face of all the consultations, as the single object of dispute ? That it was the object of dispute, I shall, for argument's sake, admit ; but does Mr. Rous's conclusion follow from the admission of his premises ? I will tell him why it does

not ; it is so very plain a reason, that, when he hears it, he will be astonished he did not discover it himself. Let me remind him, then, that all the inferences which connexions with the *Nabob* so amply supplied on the *one hand*, connexions with the *Rajah* would as amply have supplied on the *other*. If the Tanjore crop was the bone of contention, the *Rajah*, by *keeping it*, had surely the same opportunity of gratitude to his adherents, that the *Nabob* had to his by *snatching it from him*. The appointment of Mr. RUSSEL, to the residency of Tanjore—Mr. Russel, the friend, the confident, the son-in-law of Lord Pigot—was surely as good a butt for insinuation as *Colonel Stuart*, for the *whole Council*. The ball might, therefore, have been thrown back with redoubled violence ; and I need not remind the Court, that the cause was conducted on our part by a gentleman whose powers of throwing it back it would be folly in me to speak of ; but he nobly disdained it ; he said he would not hire out his talents to scatter insinuation and abuse, when the administration of right and justice did not require it ; and his Clients, while they received the full, faithful, and energetic exercise of his great abilities, admired and applauded the delicate manly rectitude of his conduct ; they felt that their cause derived a dignity and a security from the MAN, greater than the *advocate*, and even than *such* an advocate, could bestow.

I shall follow the example of Mr. Dunning. God

forbid, my Lord, that I should insult the ashes of a brave man, who, in other respects, deserved well of his country ; but let me remind the gentlemen on the other side, that the honour of the LIVING is as sacred a call on humanity and justice as the memory of the DEAD.

My Lord, the case, thus stripped of the false colours thrown upon it by party defamation, stands upon plain and simple principles, and I shall, therefore, discuss it in the same arrangement which your Lordships pursued in summing up the evidence to the Jury at the trial, only substituting alleviation for justification.

First, In whom did the ordinary powers of the government of Madras reside ?

Secondly, What acts were done by Lord Pigot, subversive of that government ?

Thirdly, What degree of criminality belongs to the confessedly illegal act of the Defendants, in assuming to themselves the whole powers of the government, *so subverted?* I say, *so subverted*; for I must keep it constantly in the eye of the Court, that the government was subverted, and was admitted by your Lordship, at the trial, to have been subverted *by Lord Pigot*, before it was assumed by *the Majority of the Council*.

First, then, in whom did the government of Fort Saint George reside ? And, in deciding this question, it will not be necessary to go, as some have done, into the general principles of government, or

to compare the deputation of a company of merchants with great political governments, either ancient or modern. The East India Company, being incorporated by act of Parliament, derived an authority from their charter of incorporation, to constitute inferior governments, dependant on them for the purposes of managing their concerns in those distant parts :— had the Company, at the time the charter was granted, been such an immense and powerful body as it has since become from the trade and prosperity of the empire, it might have happened that the forms of these governments would have been accurately chalked out by Parliament, and been made part of the charter ; in which case, the charter itself would have been the only place to have resorted to for the solution of any question respecting the powers of such governments, because the Company, by the general law of all corporations, could have made no by-laws, or standing orders, repugnant to it ; but, on the other hand, the charter having left them at liberty, in this instance, and not having prescribed constitutions for their territorial governments in India, there can be no possible place to resort to for the solution of such questions, but to the commissions of government granted by the Company ; their standing orders, which may be considered as fundamental constitutions ; and such explanatory instructions as they may, from time to time, have transmitted to their servants for the regulation of

their conduct;—by these, and these alone, must every dispute arising in the governments of India be determined, except such as fall within the cognizance of the act of the thirteenth of George the Third, for the regulation of the Company's affairs, as well in India as in Europe.

First, then, as to the commission of government, where the clause, on which they build the most, is made to run thus: “And to the end that he might be the better enabled to manage all the affairs of them the said Company, they appointed certain persons, therein named, to be of their Council at Fort Saint George.” These words would certainly imply the President to be an integral and substantive part distinct from the Council; but, unfortunately, no such words are contained in the commission of government, which speaks a very different language, almost in itself conclusive against the proposition they wish to establish. The words are, “And to the end that the said George Lord Pigot might be the better enabled to manage all the affairs of us the said Company, we do constitute and ordain George Stratton, Esq. to be SECOND in our Council of Fort Saint George, to wit, TO BE NEXT IN THE COUNCIL after our said President George Lord Pigot.” It is impossible for the English language more plainly to mark out the President to be merely *the first in Council*, and not an integral substantive part, *assisted by a Council*; for, in such case, Mr. Stratton, the senior Counsellor, would,

it is apprehended, be called the *first in Council*, instead of the *second* in Council, to wit, next after the President; and this clause in the commission, so explained, not only goes far by itself to resist the claim of independence in the President, but takes off from the ambiguity and uncertainty which would otherwise cloud the construction of the clause that follows, viz. "And we do hereby give and grant
 " unto our said President and Governor George
 " Lord Pigot, *and to our Council afore-named*, or
 " the major part of *them*, full power and authority,
 " &c." The President and Council being here named distinctly, the word *them*, without the foregoing clause, might seem to constitute the President an integral part, and separate from the Council; but the President, having been before *constructively* named as the *first in Council*; Mr. Stratton, though the senior Counsellor, being expressly named the *second*, it is plain the word *them* signifies *the majority of such Council, of which the President is the first*, and who is named distinctly, not only by way of pre-eminence, but because all public bodies are called and described by their corporate names, and all their acts witnessed by their common seals, whatever their internal constitutions may be. No heads of corporations have, by the common law of England, any negative on the proceedings of the other constituent parts, unless by express provision in their charters; yet all their powers are given to them, and exercised by them, in their corporate names, which ever makes

the head a party, although he may be dissentient from the act that receives authority from his name.

The standing orders of the Company, published in 1687, and 1702, which may be considered as fundamental constitutions, are plain and unequivocal; they enjoin, "That all their affairs shall be transacted IN COUNCIL, and ordered and managed as the MAJORITY OF THE COUNCIL shall determine, and not otherwise on any pretence whatsoever." And again, "That whatever is agreed on by the MAJORITY shall be the order by which each one is to act; and every individual person, *even the dissenters themselves*, are to perform their parts in the prosecution thereof."

The agreement of the Majority being denominated an ORDER, shows as clearly as language can do, that obedience is expected to their determination; and it is equally plain, that no constituent member of that government can frustrate or counteract such order, since each individual, *even the dissenters themselves*, are commanded to act in conformity to it, and to perform their parts in the prosecution thereof. In speaking to dispassionate men, it is almost needless to add any arguments to show that the President's claim to refuse to put a question, adopted by a Majority of Council, stands upon the very same grounds as his claim to a negative on their proceedings, and that, if the first be overturned, the second must fall along with it; for if he be not an integral part of the government, and his concurrence be con-

sequently not necessary to constitute an act of it, then his office as President, *with respect to putting questions*, must necessarily be only ministerial, and he cannot obstruct the proceedings by refusing to put them; for, if he could, his power would be equal in effect to that of an integral part; and it would be a strange solecism indeed, if, at the same time that all the affairs of the government were to be managed and ordered by the opinions of a Majority, the President could prevent such opinions from ever being collected; and, at the same time that their acts would bind him, could prevent such acts from ever taking place. But it is altogether unnecessary to explain, by argument and inference, that which the Company, who are certainly the best judges of their own meaning, have explained in absolute and unequivocal terms, by their instructions sent by Mr. Whitehill to Madras, explanatory of the new commission, by which they expressly declare the government to be in the *major part of the Council*, giving the President, or the senior Counsellor in his absence, a casting vote, and directing *that every question proposed in writing by any Member of Council, shall be put by the Governor, or, in his absence, by the senior member acting as President for the time being; and that every question, carried by a majority, shall be deemed the act of the President and Council.* Indeed, the uniform determinations of the Directors on every occasion where this question has been referred to them, have been

in favour of the Majority of Council ; even so late as the 21st of April 1777, *subsequent to the disturbances at Madras*, it will be found upon their records to have been resolved by ballot, "*That the powers contended for and assumed by Lord Pigot, are neither known in the constitution of the Company, nor authorized by charter, nor warranted by any orders or instructions of the Court of Directors.*" It is clear, therefore, beyond all controversy, that the President and Council were, at all times, bound and concluded by the decision of the Majority, and that it was his duty to put every question proposed by any member of the Board.

Had these regulations been made part of the *new* commission, they might have been considered as a *new* establishment, and not as a recognition of the *former* government ; and consequently such regulations subsequent to the disturbances, could be no protection for the Majority acting under the *former* commission ; but the caution of the East India Company, to exclude the possibility of such a construction, is most striking and remarkable : sitting down to frame a new commission under the immediate pressure of the difficulties that had arisen from the equivocal expressions of the former ; they, nevertheless, adopt and preserve the very same words in all the parts on which the dispute arose, the two commissions differing in nothing except in the special preamble restoring Lord Pigot ; and the object of this caution is self-evident, because, if, instead of

thus preserving the same form, and sending out collateral instructions to explain it, they had rendered the new commission more precise and unequivocal by *new modes of expression*, it would have carried the appearance of a *new* establishment of what the government should *in future be*, and not as a recognition and definition of what it *always had been*; but by thus using the same form of commission, and accompanying it with explanatory regulations, they, beyond all dispute, pronounced the former commission always to have implied what they expressly declare the latter to be, as it is impossible to suppose that the Company would make use of the same form of words to express delegations of authority diametrically opposite to each other. But, taking it for argument's sake, to be a new establishment rather than a recognition, still it is a strong protection to the Defendants. If the question, indeed, was concerning the regularity of an act done by the Majority, without the President, coming before the Court by a person claiming a franchise under it, or in any other *civil* shape where the constitution of the government was in issue, my argument, I admit, would not hold; the Court would certainly, *in such case*, be obliged to confine itself strictly to the commission of government, and such explanatory constitutions as were precedent to the act, the regularity of which was the subject of discussion; but it is very different when men are prosecuted *criminally* for subverting a constitution, and abusing delegated authority:

they are not to be punished, I trust, for the obscurity of their employers' commissions, if they have been fortunate enough, notwithstanding such obscurity, to construe them as they were intended by their authors : if their employers declare, even after an act done, *This is what we meant should be our government*, that ought to be sufficient to sanction previous acts that correspond with such declarations, more especially declarations made on the spur of the occasion which such previous acts had produced ; for otherwise this monstrous supposition must be admitted, viz. That the Company had enlarged the power of their servants, because they had, in defiance of their orders, assumed them when they had them not ; whereas, the reasonable construction of the Company's subsequent proceeding, is this : *It is necessary that our Council, on the President's refusing to perform his duty, should have such powers of acting WITHOUT HIM, as they have assumed in the late emergency ; the obscurity of our commissions and instructions has afforded a pretence of resistance, which has obliged our servants either to surrender the spirit of their trusts, or to violate the form ; to prevent such disputes in future, we do that, HITHERTO UNKNOWN ; we make a regular form of government, and, at the same time, prescribe a rule of action in case it should not act up to the end of its present institution, to prevent an exercise of discretion always, if possible, to be avoided in every government, but more especially in such as are subordinate. There-*

fore, my Lord, whether the late instructions be considered as explanatory, or enacting, they ought to be a protection to the Defendants *in a criminal court*, unless when their employers are the prosecutors. Neither Parliament, nor the Crown, ought to interfere; but, as they have done it, no evidence ought to have convicted them of assuming the powers of government, and obstructing the Company's service, but the evidence of the Directors of that Company under whom they acted. They ought not to be judged by blind records and parchments, *whilst the authors of them are at hand to explain them*. It is a shocking absurdity to see men convicted of abusing trusts, when the persons who gave them are neither prosecutors nor witnesses against them.

The ordinary powers of the government of Madras being thus proved to have resided in the Majority of the Council, it now only remains to show, by a short state of the evidence, the necessity which impelled the extraordinary, and otherwise unwarrantable exercise of such powers in suspending and imprisoning Lord Pigot; for they once more enter a protest against being thought to have assumed and exercised such power as incident to their commission, while the government subsisted. It is their business to show, that, as long as the government continued to subsist, they faithfully acted their parts in it; and that it was not till after a total subversion of it, by an arbitrary suspension of the governing

powers, that they asserted their own rights, and restored the government by resuming them.

On the 8th of July, Lord Pigot refused, as President, *to put a question* to the Board (upon the regular motion of a member), for rescinding a resolution before entered into. This refusal left the Majority no choice between an absolute surrender of their trusts, and an exercise of them without his ministerial assistance; there was no other alternative *in the absence of a superior coercive authority, to compel him to a specific performance of his duty*; but they proceeded no farther than the necessity justified; they did not extend the irregularity (if any there was) beyond the political urgency of the occasion.—Although their constitutional rights were infringed by the President's claim, they formed no plan for their general vindication; but contented themselves with declaring, on that particular occasion, that, as the government resided *in them*, the President ought not to refuse putting the question, and that the resolution ought to be rescinded.

When the President again refused to put the question in the month following, for taking into consideration the draughts of instructions to Colonel Stuart (which was the immediate cause of all the disturbances that followed), they again preserved the same moderation, and never dreamt of any farther vindication of their authority, thus usurped, than should become absolutely necessary for the performance of the trusts delegated to them by the Company,

which they considered it to be treachery to desert. They lamented the necessity of departing even from form; and, therefore, although the President's resolution to emancipate himself from their constitutional controul, was avowed upon the public minutes of the consultations, they first adjourned without coming to any resolution at all, in hopes of obtaining formality and regularity to their proceedings, by the President's concurrence:—disappointed in that hope by his persevering to refuse, and driven to the necessity of either surrendering their legal authority, or of devising some other means of exercising it without his personal concurrence, *having (as before observed) no process to compel him to give it*, they passed a vote approving of the instructions, and wrote a letter to Colonel Harper, containing orders to deliver the command to Colonel Stuart; but they did not proceed to sign it at that consultation, still hoping, by an adjournment, to gain Lord Pigot's sanction to acts legal in all points by the constitution of the government, except, perhaps, in wanting that *form* which it was his duty to give them.

The use which Lord Pigot made of this slowness of the Majority to vindicate the divided rights and spirit of the Government, by a departure from even its undecided forms, notwithstanding the political necessity which arose singly from his own illegal refusal, is very luckily recorded by one of his Lordship's particular friends in Council, and a party to the transaction, as it would have been, otherwise,

too much to have expected full credit to it from the most impartial mind.

"It had been discussed," says Mr. Dalrymple, before the Council met, what measures could be taken to support the government established by the Company, in case the Majority should still persist in their resolution to come to no compromise or reference of the matter in question, to the decision of the Court of Directors, but to carry things to extremity. One mode occurred to Lord Pigot, viz. by putting Colonel Stuart in arrest if he obeyed an order without the Governor's concurrence. To this many objections arose. Colonel Stuart might contrive to receive the orders WITHOUT the garrison, and, consequently, by the new military regulations, not be liable to the Governor's arrest: if he was arrested, the Majority would, of course, refuse to issue a warrant for a court-martial, and confusion and disgrace must be the consequence.

"The only expedient that occurred to any of us, was, to ground a charge in case of making their declaration in the name of the Council, instead of the President and Council; but here an apprehension arose, that they would see this impropriety, and express their order, not in the name of the Council, as they had hinted, but in the name of the President and Council, maintaining that the Majority constituted the efficient Board of President and Council. In this case, we could devise no measure to be pursued consistent with the rules of the service;

*“ but Lord Pigot said there was no fear of this, as
“ he insisted the Secretary would not dare to issue any
“ order in his name when he forbade it. It was im-
“ possible to know, whether Sir Robert Fletcher would
“ attend, or not ; it was necessary to have every thing
“ prepared, that nothing might be to be done in
“ Council ; the Company’s orders required the charge
“ to be in writing ; THE GOVERNOR, THEREFORE,
“ HAD IN HIS POCKET CHARGES PREPARED FOR
“ EVERY PROBABLE CONTINGENCY, whether they
“ began at the eldest or the youngest, and whether the
“ form was an order from themselves, or an order to
“ the Secretary ; and whether Sir Robert Fletcher
“ was present, or not. It was agreed, that the first
“ of us to whom the paper was presented for signing,
“ should immediately hand it to the President, who
“ was then to produce the charge ; the standing orders
“ directing that members, against whom a charge is
“ made, should have no seat ; the members charged
“ were, of course, deprived of their votes. As our
“ ideas went no farther than relieving the Governor
“ from the compulsion the Majority wanted to lay
“ him under, it was determined to suspend no more
“ than the necessity of the circumstance required.”*

With this snare laid for them during the interval of that adjournment, which their moderation had led them to, the Council met on the 22d of August, and, after having recorded their dissent from the President’s illegal claim, to a negative on their proceedings, by refusing to perform his part in the pro-

secution of them (though strictly enjoined thereto by the standing orders of the Company), and in which refusal he still obstinately persisted, they entered a minute, declaring it as their opinion, that the resolution of the Council should be carried into execution without further delay, and that the instructions to Colonel Stuart, and the letter to Colonel Harper, should be signed by the Secretary by order of Council.

This minute was regularly signed by a majority, and the President having again positively refused his concurrence, they prepared a letter to Mr. Secretary Sullivan, approving of the instructions to Colonel Stuart, and the letter to Lieutenant-colonel Harper.

The letter thus written, *in the name of the Majority*, and under their most public and avowed auspices, it was the immediate purpose of *all of them* to have signed in pursuance of the minute they had just before delivered in, expressive of their authority to that purpose; but the President, according to the *ingenious* plan preconcerted during the adjournment, snatched the paper from Mr. Brooke after he and Mr. Stratton had signed it, before the rest of the Majority could put their names to it, and pulling a written accusation out of his pocket, charged them as being guilty of an act subversive of the government; put the question of suspension on both at once, and ordered the Secretary to take neither of their votes, which, according to Mr. Dalrymple's

economical scheme of illegality, exactly got rid of the Majority, by his own (*the accuser's*) casting vote.

The weakness and absurdity of the *principle* (if it deserves the name) on which this suspension was founded, creates a difficulty in seriously exposing it by argument; yet, as it produced all the consequences that followed, I cannot dismiss it without the following remarks :

First, It was a gross violation of the constitution of the government, even admitting Lord Pigot to have been that integral part of it, which he assumed to be, as the establishment of that claim could only have given him a negative on the proceedings of a Majority, but never could have enabled him to fabricate one so as to do positive acts without one ; the sudden charge and suspension of Messrs. Stratton and Brooke, and breaking the Majority by putting the question on both at once, would, therefore, have been irregular, even supposing the concurrence of the Majority to the act which constituted the charge against them, to have been unknown to Lord Pigot, and the Minority who voted with him : but when their concurrence was perfectly known ; when the Majority of the Board had just before publicly delivered in a minute, expressive of their right to authorize the Secretary to sign the order, if the President refused to do it ; when the order was avowedly drawn out in pursuance of that minute, which made the whole one act, and was in the regular course of

signing by the Majority, who had just before declared their authority to sign it ; the snatching the paper under such circumstances, while unfinished, and arraigning those who had already signed it under the auspices of the Majority, as being guilty of an act subversive of the government, lodged in that Majority, and turning it into a Minority by excluding the votes of the parties charged, was a trick upon the governing powers which they could neither have submitted to with honour to themselves, or duty to their employers.

Such a power, however, Lord Pigot assumed over the government of Fort Saint George, by converting an act of the Majority, rendered necessary by his refusal to do his duty, into a criminal charge against two members acting under their authority, and by a device too shallow to impose on the meanest understanding, cut them off from acting as part of that Majority, by which the powers of the government were subverted, and passed away from them while they were in the very act of saving them from subversion.

It is unnecessary to say, that they were neither called upon in duty, nor even authorized, had they been willing, to attend the summons of a Board so constituted by the foulest usurpation ; a Board at which they must either have sacrificed their consciences and judgments, or become the vain opposers of measures destructive to the interests of their employers ; they therefore assembled, and an-

swered the illegal summons, by a public protest against the usurped authority by which it issued. To this Council, assembled for the single purpose of sending such protest, they did not, indeed, summon the subverters of the government against whom it was levelled; affairs were arrived at too dangerous a crisis to sacrifice substance to forms, which it was impossible should have been regarded. Lord Pigot and his associates, on receiving the protest against the proceedings of the 22d of August, completed the subversion of the constitution, by the suspension of the rest of the Majority of the Council, and ordered Sir Robert Fletcher, the Commander-in-chief, to be put under arrest, to be tried by a *court-martial*, for asserting the rights of the *civil* government as a member of the Council. This is positively sworn to have been done by Lord Pigot before their assumption of the government. Here then was a crisis in which it was necessary to act with decision, and, in asserting their rights by civil authority, to save the impending consequences of tumult and blood.—The period of temporizing was past, and there was no doubt of what it was their duty to do. Charged with the powers of the government, they could not surrender them with honour, and it was impossible to maintain them with safety or effect, while their legal authority was treated as usurpation and rebellion. They, therefore, held a Council, and agreed that the fortress and garrison should be in their hands, and under their command, as the legal

representatives of the Company, and, as there was every thing to dread from the intemperance of Lord Pigot's disposition, they, at the same time, authorized Colonel Stuart to arrest his person if he thought it necessary to preserve the peace of the settlement; Colonel Stuart *did* think it necessary, and his person was accordingly arrested; but, during his necessary confinement, he was treated with every mark of tenderness and respect.

Such, my Lord, is the case—and it is much to the honour of the Defendants, that not a single fact appeared, or was attempted to be made appear, at the trial, that did not stand avowed upon the face of their public proceedings; I say, literally none; for I will not wheel into Court that miserable post-chaise, nor its flogged postillion, the only living birth of this mountain which has been two years in its labour; every thing, and the reason and motive of every thing, appeared, and still appear, to speak and plead for themselves. No cabals;—no private meetings;—no coming prepared for all possible events;—no secret manufacture of charges;—no tricks to overcome majorities;—but every thing fair, open, and manly, to be judged of by the justice of their employers, the equity of their country, and the candour and humanity of the civilized world. As long as the government subsisted, their parts appear to have been acted in it with regularity and fidelity, nor was it till after a total subversion of it, by the arbitrary suspension of the governing powers (*and in*

the absence of all superior visitation), that they asserted their own rights, and restored the government by reassuming them. The powers so assumed, appear to have been exercised with dignity and moderation; the necessary restraint of Lord Pigot's person was not tainted with any unnecessary rigour, but alleviated (notwithstanding the dangerous folly of his friends) with every enlargement of intercourse, and every token of respect; the most jealous disinterestedness was observed by Mr. Stratton in not receiving even the lawful profits of magistracy; and the temporary authority, thus exerted for the benefit of their employers, was resigned back into their hands with cheerfulness and submission; resigned, not like rapacious usurpers with exhausted revenues, disordered dependencies, and distracted councils, but with such large investments, and such harmonious dispositions, as have been hitherto unknown in the Company's affairs in any settlement in the East.

Your Lordships are, therefore, to decide this day on a question never before decided, or even agitated in any English Court of Justice; you are to decide upon the merits of A REVOLUTION—which, as all revolutions must be, was contrary to established law, and not legally to be justified. The only revolutions which have happened in this land, have been, when Heaven was the only Court of Appeal, because their authors had no human superiors; and so rapidly has this little island branched itself out into a great em-

pire, that I believe it has never occurred that any disorder in any of its foreign *civil* dependencies, has been the subject of judicial inquiry ; but, I apprehend that, since the empire has thus expanded itself, and established governments *at distances inaccessible to its own ordinary visitation and superintendence*, all such subordinate governments, all political emanations from them, must be regulated by the same spirit and principles which animate and direct the parent state. Human laws neither do nor can make provision for cases which suppose the governments they establish to fall off from the ends of their institutions ; and, therefore, on such extraordinary emergencies, when *forms* can no longer operate, from the absence of a superior power to compel their operation, it strikes me to be the duty of the component parts of such governments, to take such steps as will best enable them to preserve the *spirit* of their trusts ; in no event whatsoever to surrender them, or submit to their subversion ; and, by considering themselves as an epitome of the constitution of their country, to keep in mind the principles by which that constitution has been preserved, and on which it is established.

These are surely fair premises to argue from, when the question is not *technical justification*, but *palliation and excuse*. The Members of the Council, in the Majority of which the efficient government of Madras resided, were certainly as deeply responsible to the India Company in conscience, and on every

principle of society, for the preservation of *its* constitution, from an undue extension of Lord Pigot's power, as the other component parts of *this* government are answerable to the people of this country for keeping the King's prerogative within its legal limits; there can be no difference but that which I have stated, namely, that the one is subordinate, and the other supreme. But as, in the total absence of the superior power, subordination to it can only operate by an appeal to it for the ratification or annulment of acts already done, and not for directions what to do (otherwise, on every emergency, government must entirely cease), I trust it is not a strained proposition, to assert, that there can be no better rule of action, when subordinate rulers must act somehow, owing to their distance from the fountain of authority, than the history of similar emergencies in the government of their country, of which they are a type and an emanation.

Now, my Lord, I believe there is no doctrine more exploded, or more repugnant to the spirit of the British government, because the revolution is built upon its ruin, than that there must be an imminent political necessity, analogous to natural necessity, to justify the resistance of the other component parts of the government, if one steps out of its delegation, and subverts the constitution; I am not speaking of technical justification.—It would be nonsense to speak of law and a revolution in the same sentence.—But I say, the British constitution,

which is a government of law, knows no greater state necessity than the inviolate preservation of the spirit of a public trust from subversion or encroachment, no matter whether the country would fall into anarchy or blood, if such subversion or encroachment were suffered to pass unresisted.—A good Whig would swoon to hear such a qualification of resistance, even of the resistance of an integral part of legislation, much less of a part merely ministerial, which, in all governments, must be subordinate to the legislature, wherever it resides. Such a state necessity, analogous to natural necessity, may be necessary to call out a private man, but is not at all applicable to the powers of a government. The Defendants did not act as *private* men, but as *governing powers*; for, although they were not, technically speaking, the government, when not assembled by the President; yet they were in the spirit of law, and on every principle of human society, the rulers of the settlement.—The Information charges the act as done by them in the public capacity of Members of the Council, in the Majority of which the government did reside; and their act must, therefore, be taken to be a public act, for the preservation of their delegated trusts, from subversion by Lord Pigot, which, on the true principle of British government, is sufficient to render resistance meritorious, though not legal.

Where was the imminent state necessity at the Revolution in this country? King James suspended

and dispensed with the laws.—What laws?—Penal laws against both Papists and Protestant Dissenters. Would England have fallen into confusion and blood if the persecuted Papist had been suffered publicly to humbug himself with the mystery of transubstantiation, and the Independent to say his prayers without the mediation of a visible church?—Parliament, on the contrary, immediately after the Revolution, repealed many of those intolerant laws, with a preamble to the act that abolished them, almost copied verbatim from the preamble of the Proclamation by which the King suspended them; yet, that suspension (although King James was, I trust, something more of an integral part of this government than Lord Pigot was of that of Madras) most justly cost him the crown of these kingdoms. What was the principle of the Revolution? I hope it is well known, understood, and revered by all good men. The principle was, that the trustees of the people were not to suffer an infringement of the constitution, *whether for good or for evil*. All tyrants are plausible and cunning enough to give their encroachments the show of public good.—Our ancestors were not to surrender the *spirit* of their trusts, though at the expense of the *form*, and though urged by no imminent state necessity to defend them; no other, at least, than that which I call, and which the constitution has ever since called the first and most imminent of all state necessities, *the immediate preservation of delegated trusts from usurp-*

ation and subversion. This is the soul of the British government.—It is the very being of every human institution which deserves the name of government ;—without it, the most perfect model of society is a painful and laborious work, which a madman, or a fool, may, in a moment, kick down and destroy.

Now, why does not the principle apply *HERE* ? Why may not inferiors, in the absence of the superior, *justly*, though not legally, at all events without sanguinary punishment, do, by a *temporary act to be annulled, or ratified, by such superior*, that which the superior would do finally, where there is no appeal at all ? Will you punish men who were obliged, from their distance from the fountain of authority, to act for themselves, only for having, at all events, refused to surrender their trusts ?—only for having saved the government, committed to their charge, from subversion ?—only for having acted, as it was the chief glory of our ancestors to have acted ? The similitude does not, to be sure, hold throughout ; but all the difference is in *our* favour ; *our* act was not peremptory and final, but temporary and submissive to annulment ; nor is the President of a Council equal only to each other individual in it, with an office, merely ministerial, to be compared with the condensed executive majesty of this great kingly government, with a negative in legislation.

The Majority of the Council was the efficient go-

vernment of Madras, or, in other words, the legislature of the settlement, whose decisions the Company directed should be the order by which each one was to act, without giving any negative in legislation to the President, whose office was consequently (as I have before said) ministerial. This ministerial office he not only refused to perform, but assumed to himself, in effect, the whole government by dissolving a Majority against him. Let me put this plain question to the Court.—Ought such arbitrary, illegal dissolution to have been submitted to?—Ought the Majority, which was, in fact, the whole government in substance, spirit, and effect, though not in regular form, to have suffered itself to be thus crumbled to pieces, and destroyed? Was there, in such a case, any safe medium between suffering both spirit and form to go out together, and thus sacrificing the form to preserve the spirit? and could the powers of the government have been assumed or exercised without bloodshed, if Lord Pigot had been left at large? I appeal to your Lordships, whether human ingenuity could have devised a *middle road* in the absence of all superior controul? Ought they to have acquiesced, and waited for the sentence of the Directors, and, on his motion, played at shuttlecock with their trusts across the globe, by referring back questions to Europe, which they were sent out to Asia to decide? Where representatives *doubt* what are the wishes of their constituents, it may be proper to make such

appeals; but, if they were subject to punishment for not consenting to them, whenever one of their body proposed them, government would be a mere mockery. It would be in the power of the President, whenever he pleased, to cripple all the proceedings of the Council. It puts me in mind of the embargo once laid upon corn by the Crown, during the recess of Parliament, which was said, in a great assembly, to be but forty days tyranny at the outside; and it equally reminds me of the celebrated constitutional reply which was made on that occasion, which it would be indelicate for me to cite here, but which, I trust, your Lordship has not forgotten *.

This would have been not only forty days tyranny at the outside, but four hundred days tyranny at the inside.—It would have been a base surrender of their trusts, and a cowardly compromising conduct unworthy of magistracy.

But the Defendants are, notwithstanding all this, CONVICTED; surely, then, either the Jury, or I, mistake. If what I have advanced be sound or reasonable in principle, the verdict must be unjust. By no means. All I have said is compatible with the verdict. Had I been on the Jury, I should have found them guilty; but, had I been in the House of Commons, I would have given my voice against the prosecution. CONVICTION! Good

* Lord Mansfield's Speech in the House of Lords against the dispensing power.

God! how could I doubt of conviction, when I know that our patriot ancestors, who assisted in bringing about the glorious Revolution, could not have stood justified in this Court, though King William sat on the throne, but must have stood self-convicted criminals without a plea to offer in their defence, had not Parliament protected them by acts of indemnity!

Nothing that I have said could have been uttered without folly to a *Jury*. It could not have been uttered with less folly to your Lordship, sitting in judgment, on this case, on a *special verdict*. They are not arguments of *law*; they are arguments of *state*, and the state ought to have heard them before it awarded the prosecution; but, having awarded it, *your Lordships now sit in their place to do justice*. If the law, indeed, had prescribed a *specific* punishment to the fact charged, the judgment of the law must have followed the conviction of the *fact*, and your Lordship could not have mitigated the sentence. They could only have sued to the state for indemnity. It would, in that case, have been the sentence of the law, not of the Judge. But it is not so here. A Judge, deciding on a misdemeanor, is bound in conscience, in the silence of law, not to allot a punishment beyond his opinion, of what the law, in its distributive justice, would have specifically allotted.

My Lord, if these arguments, drawn from a reflection on the principles of society in general, and

of our own government in particular, should, from their uncommonness in a Court of Justice, fail to make that immediate and decided impression, which their justice would otherwise insure to them, I beseech your Lordship to call to mind, that the Defendants who stand here for judgment, stand before you for acts done as the rulers of a valuable, immensely extended, and important country, so placed at the very extremity of the world, that the earth itself travels round her orbit in a shorter time than the Eastern deputy can hear the voice of the European superior; a country surrounded, not only with nations which policy, but which Nature, violated Nature! has made our enemies, and where government must, therefore, be always on the watch, and in full vigour, to maintain dominion over superior numbers by superior policy.—The conduct of men, in such situations, ought not surely to be measured on the narrow scale of municipal law.—*Their* acts must not be judged of like the acts of a little corporation within the reach of a mandamus, or of the executive strength of the state.—I cannot, indeed, help borrowing an expression from a most excellent and eloquent person, when the conduct of one of our colony governments was, like this, rather hastily arraigned in Parliament. “I am not ripe,” said a Member of the House of Commons, “to pass sentence on the gravest public bodies, intrusted with magistracies of great weight and authority, and charged with the safety of their fellow-citizens

“on the very same title that I am; I really think, that for wise minds, this is not judicious; for sober minds, not decent; for minds tinctured with humanity, not mild and merciful.” Who can refuse his assent to such admirable, manly sentiments?—What, indeed, can be so repugnant to humanity, sound policy, decency, or justice, as to punish public men, acting in extremities not provided for by positive institution, without a corrupt motive proved, or even charged upon them? I repeat the words again, that every man’s conscience may force him to follow me, *without a corrupt motive proved, or even charged upon them.*

Yet it has been said, that PUBLIC EXAMPLE ought to weigh heavily with the Court in pronouncing judgment.—I think so too.—It ought to weigh heavily indeed; but all its weight ought to be placed in the saving, not in the vindictive scale. PUBLIC EXAMPLE requires that men should be secure in the exercise of the great *public* duties they owe to magistracy, which are paramount to the obligations of obedience they owe to the laws as *private* men. PUBLIC EXAMPLE requires that no magistrate should be punished for an error in judgment, even in the common course of his duty, which he ought to know, and for which there is a certain rule; much less for an act like this, in which he must either do wrong by seizing the trust of another, or do wrong by surrendering his own.—PUBLIC EXAMPLE requires that a magistrate should stand or fall by his

HEART ;—that is the only part of a magistrate vulnerable in law in every civilized country in the world.—WHO HAS WOUNDED THE DEFENDANTS THERE ? Even in this fertile age of perjury, where oaths may be had cheap, and where false oaths might be safe from the distance of refutation, no one champion of falsehood has stood forth, but the whole evidence was read out of a book *printed by the Defendants themselves, for the inspection of all mankind.*

What, then, has produced this virulence of prosecution in a country so famed for the humanity of its inhabitants, and the mildness of its laws ?—*The death of Lord Pigot during the revolution in the government ?* Strange, that malice should conjure up so improbable an insinuation, as that the Defendants were interested in that unfortunate event ; no event, indeed, could be to them more truly unfortunate. If Lord Pigot had lived to return to England, this prosecution had never been.—His guilt and his popularity, gained by other acts than these, would have been the best protection for THEIR friendless innocence.—Lord Pigot, besides many connexions in this country, had a brother, who has, and who deserves to have, many friends in it.—I can judge of the zeal of his friends, from the respect and friendship I feel for him myself ; a zeal, which might have misled me, as it has many better and wiser than me, if my professional duty had not led me to an early opportunity of correcting prejudice by truth.—In-

deed, some of the darkest and most dangerous prejudices of men, arise from the most honourable principles of the mind.—When prejudices are caught up from bad passions, the worst of men feel intervals of remorse to soften and disperse them ; but when they arise from a generous, though mistaken source, they are hugged closer to the bosom, and the kindest and most compassionate natures feel a pleasure in fostering a blind and unjust resentment.—This is the reason that the Defendants have not met with that protection from many, which their meritorious public conduct entitled them to, and which has given rise to a cabal against them so unworthy the legislature of an enlightened people, a cabal which would stand forth as a striking blot upon its justice, if it were not kept in countenance by a happy uniformity of proceeding, as this falling country can well witness.—I believe, indeed, this is the first instance of a criminal trial in England, canvassed for like an election, supported by defamation, and publicly persisted in, in the face of a Court of Justice, without the smallest shadow of evidence.—This deficiency has compelled the Counsel for the Crown to supply the baldness of the cause with the most foreign invective ; foreign, not only in proof, but in accusation.—In justice to them, I use the word *compelled*, as, I believe, none of them would have been inclined, from what I know of their own manners and dispositions, to adopt such a conduct with-

out a most imminent *Westminster-hall necessity*, viz. that of saying something in support of a *cause*, which nothing but slander and falsehood could support. *Their* duty as *public* and *private* men was, perhaps, as incompatible as the duty of my Clients; and they have chosen, like them, to fulfil the *public* one; and, indeed, nothing less than the great ability and eloquence (*I will not say the propriety*) with which that public duty was fulfilled at the trial, could have saved the prosecution from ridicule and contempt. As for us, I am sure we have lost nothing with the world, or with the Court, by our moderation; nor could the prejudices against us, even if the trial had not dispelled them, reach us within these venerable walls.—Nothing, unsupported by evidence, that has been said here, or any where, will have any other effect upon the Court, than to inspire it with more abundant caution in pronouncing judgment.—Judges in this country are not expected to shut themselves up from society; and, therefore, when a subject that is to pass in judgment before them, is of a public and popular nature, and base arts have been used to excite prejudices, it will only make wise and just magistrates (such as I know, and rejoice that I am addressing myself to) the more upon their guard, rigidly to confine all their views to the record of the charge which lies before them, and to the evidence by which it has been proved, and to be doubly jealous of every avenue, by which

human prejudices can force their way to mislead the soundest understandings, and to harden the most upright hearts.

The Court, by its judgment, only imposed a fine of One Thousand Pounds upon each of the Defendants; a sentence which, we believe, was considered at the time by the whole profession of the law, and by all others qualified to consider such a subject, as highly just and proper, under all the circumstances of the case. The accusation was weighty, but the Judges were bound, by their oaths, to weigh all the circumstances of mitigation, as they appeared from the facts in evidence, and from the pleadings of the Counsel at the Bar. They were not to pronounce a severe judgment because the House of Commons was the Prosecutor. Mr. Burke, however, who had taken a very warm, and, we have no doubt, an honest part, in the prosecution, took great offence at the lenient conclusion; and repeatedly animadverted upon it in the House of Commons. There can be no doubt of the high value of the privilege possessed by the Representatives of the People, to be public accusers; but for that very reason they can have no right to determine, or to interfere with the judgments of other tribunals, when they themselves are the prosecutors. If Judges, indeed, conduct themselves corruptly, or

partially, upon a prosecution by the House of Commons, or upon any other judicial proceeding whatsoever, it is a high and valuable privilege of the People's Representatives in Parliament to proceed against the offenders by impeachment; but it is not the duty of any member of that high assembly, to disparage the decisions of the Judges, by invidious observations, without any public proceeding which may bring their merits, or demerits, into public examination. Such a course is injurious to those who have been the subjects of them; disrespectful to the magistrates who have pronounced them; and contrary to the spirit and character of the British Constitution.

MORTON AGAINST FENN.

S P E E C H

IN THE

COURT OF KING'S BENCH

AGAINST A NEW TRIAL.

P R E F A C E.

THE following Speech may appear, at first glance, to be scarcely worthy of a place in a collection of pleadings upon so many interesting subjects; but it will be found, on examination, to contain very important principles of law. The occasion of it was shortly this. A woman of the name of Morton, who was the Plaintiff, in a Cause tried before Lord Mansfield at the sittings at Guildhall, in London, had hired herself to be Housekeeper to a Mr. Fenn, who was the Defendant, an old and infirm man.—Mrs. Morton, the Plaintiff, was not a young woman, and had no great personal recommendations.—The old gentleman, however, thought otherwise; and, to induce his housekeeper to cohabit with him, had promised to marry her; the breach of which promise was the foundation of an action to recover damages.

The Cause was conducted by Lord Erskine, who had not then been long at the Bar.—There is no note of what passed at the Trial, nor is it material; except that, after the Plaintiff's case had been opened, and, after some cross examination of the Witness who proved the promise, with a view to ridicule the person and manners of the Plaintiff, Mr. Wallace, then Attorney General, and who was a very able Nisi Prius advocate, endeavoured, as the lawyers call it, without calling witnesses, to laugh the Cause out of Court, by representing, that neither of the parties to the contract had any loss from the breach of it, as the Plaintiff was an ugly old woman, and the Defendant, who was then in Court, and whom he pointed out to the Jury to make the scene more ludicrous, was not a person, in the loss of whom, as A HUSBAND, there could be any claim to more than a farthing damages.—The Jury, however, returned a verdict of TWO THOUSAND POUNDS; and, in the term which followed, a Rule having been obtained by the Attorney General for setting aside the verdict, and for a new trial, on the ground, that the damages were EXCESSIVE, the following very short Speech was made by Mr. Erskine, maintaining his Client's right to the whole money, and denying the jurisdiction of the Court, in such a case, to impeach the verdict of the Jury.

Perhaps, there is no subject more important in the whole volumes of the law, than that which regards the distinct jurisdictions of Judges and Juries in that

mixed form of trial, which is the peculiar and the best feature in the British Constitution.—The subject, as it applies to criminal cases, is treated of in every possible point of view in the Dean of St. Asaph's Case in the first volume of the former Collection; but it is most important, also (even as it regards civil cases), that the distinct offices of Judges and Juries should be thoroughly understood, and rigidly maintained.—If in civil actions the Court had no jurisdiction to set aside verdicts, and to grant new trials, even in cases where the Jury may either have mistaken the law, or where they may have assessed damages by no means commensurate with the loss of property, or with the injury sustained by the party complaining; if, in cases where Juries may have assessed damages either manifestly and grossly excessive, or unjustly inadequate, the Court had no jurisdiction to send the case to another hearing for more mature consideration, Trial by Jury, the boast and glory of our country, would be as great a national evil, as it is now a benefit and a blessing; but if, on the other hand, revisions of verdicts were suffered to take place, unless in cases of manifest injustice; if new trials were to be awarded, because Judges might differ from Juries upon occasions where men of sense and justice might reasonably differ from one another, such a proceeding would be the substitution of judicial authority, in fixed magistrates, for the discretion lodged by the Constitution in the popular jurisdictions of the country.

Every pleading, therefore, which accurately marks out, and firmly maintains, those salutary boundaries, though already very well understood and ascertained, is worthy of a faithful report. On the present occasion, the Court refused to set aside the verdict, upon the principles contained in the short Speech which follows.

MY LORD,

THE jurisdiction exercised by the Court in cases of excessive damages stands upon so sensible and so clear a principle, that the bare stating of it must, in itself, be an answer to the rule for a new trial which the Defendant has obtained.

In cases of pecuniary contracts, the damage is matter of *visible* and *certain* calculation; the Court can estimate it as well as the Jury; and though it never interferes, on account of those variations, which may be fairly supposed to have arisen from the different degrees of credit given to the evidence, yet where the Jury steps beyond every possible estimate of the injury arising from the contract broken, the Court must say that the verdict is wrong; because it is a subject upon which there can be no difference of judgment amongst reasonable men; the advantage of a pecuniary contract, and, consequently, the loss following from the breach of it, being a matter

of dry calculation.—In such cases, therefore, the Court does not set up a jurisdiction over damages in violation, or controul, of the constitutional rights of Juries, but only prevents the operation of either a visible, certain, palpable mistake, or a wilful act of injustice:—this is the whole—and without such power in the Court, since attaints have gone into disuse, the Constitution would be wretchedly defective.

The same principles apply, likewise, to all actions of tort founded on injuries to property; the measure of damages in such actions being equally certain.—As much as the Plaintiff's property is diminished in value by the act of the Defendant, so much shall the Defendant pay; for he must place the Plaintiff in the same condition as if the wrong had not been committed:—in such discussions, there must be, likewise, many shades of difference in the judgments of men, respecting the loss and inconvenience suffered by acts injurious to property, and, as far as these differences can have any reasonable operation, Juries have an uncontrouled jurisdiction; as the Court will never set aside their verdict for a difference which might fairly subsist upon the evidence between intelligent and unprejudiced men: but here, too, when they go beyond the *utmost limits of discreet judgment*, the Court interferences, because there is in all cases of injury to *property*, a *pecuniary* calculation to govern the jurisdiction it exercises; all attacks

on property resolving themselves into pecuniary loss, pecuniary damages are easily adjusted.

But there is a catalogue of wrongs over which Juries, where neither favour nor corruption can be alleged against them, ought to have an uncontroled dominion; not because the Court has not the same superintending jurisdiction in these as in other cases, but because it can rarely have any standard, by which to correct the error of the verdict.

There are other rights which society is instituted to protect as well as the right of property, which are much more valuable than property, and for the deprivation of which no adequate compensation in money can be made.—What Court, for instance, shall say in an action for slandering an honest and virtuous character, that a Jury has over-rated the wrong which honour and sensibility endure at the very shadow of reproach?—If a wife is seduced by the adulterer from her husband, or a daughter from the protection of her father, can the Court say this or that sum of money is too much for villany to pay, or for misery to receive? In neither of these instances can the Jury compel the Defendant to make an adequate atonement, for neither honour nor happiness can be estimated in gold; and the law has only recourse to pecuniary compensation from the want of power to make the sufferer any other.

These principles apply, in a strong degree, to the case before the Court. It is, indeed, a suit for

breach of a contract, but not of a *pecuniary* contract;—injury to *property* is an ingredient—but not the *sole* ingredient of the action:—there is much personal wrong; and of a sort that is irreparable: there is, upon the evidence reported by your Lordship, loss of health, loss of happiness, loss of protection from relations and friends, loss of honour which had been before maintained (in itself the full measure of ruin to a woman); and, added to all these, there is loss of property in the disappointment of a permanent settlement for life:—and for all this, the Jury have given Two Thousand Pounds, not more than a year's interest of the Defendant's property.

I am, therefore, at a loss to discover any circumstance on the face of your Lordship's report, from which, alone, the Court must judge of the evidence, that can warrant a judgment that the Jury have done wrong; for, independent of their exclusive right to settle the degrees of credit due to the witnesses, what was there at the trial, or what is there *now*, to bring their credit into question? Their characters stood before the Jury, and stand before the Court, unimpeached; and Mr. Wallace's whole argument, if, indeed, jest is to be considered as reason, hangs upon the inadmissible supposition that the witnesses exaggerated the case; but the *Jury* have decided on their veracity; and, therefore, before the Court can grant a new trial, it must say, that the verdict is excessive and illegal *upon the facts as reported by your*

Lordship, taking them to be literally as they proceeded from the mouths of the witnesses.—Upon this state of the case, and it is impossible to remove me from it, I think it is not very difficult to make up the Defendant's bill for Two Thousand Pounds.

The Plaintiff appears to be the daughter of a clergyman, and to have been bred up with the notions of a gentlewoman; she had been before respectably married, in which condition, and during her widowhood, she had preserved her character, and had been protected and respected by her relations and friends. It is probable that her circumstances were very low, from the character in which she was introduced to the Defendant, who, being an old and infirm man, was desirous of some elderly person as a housekeeper; and no imputation can justly be cast upon the Plaintiff for consenting to such an introduction; for, by Mr. Wallace's favour, the Jury had a view of this Defendant, and the very sight of him rebutted every suspicion that could possibly fall upon a woman of any age, constitution, or complexion.—I am sure every body who was in Court must agree with me, that all the diseases catalogued in the dispensatory seemed to be running a race for his life, though the asthma appeared to have completely distanced his competitors, as the fellow was blowing like a smith's bellows the whole time of the trial.—His teeth being all gone, I shall say nothing of his gums; and, as to his shape, to be sure a bass-fiddle is perfect gen-

tility compared with it. I was surprised, therefore, that Mr. Wallace should be the first to point out this mummy to the Jury, and to comment on his imperfections, because they proved to a demonstration, that the Plaintiff could have no other possible inducement or temptation to cohabit with him, but that express and solemn promise of marriage which was the foundation of the action, and the aggravation of the wrong.—But, besides such plain presumption, it is directly *in proof* that she never DID cohabit with him before, nor until under this express promise and condition ; so that the whole argument is, that disease and infirmity are excuses for villainy, and extinction of vigour an apology for debauchery.—The age of the Plaintiff, who is a woman towards fifty, was another topic ; so that a crime is argued to be *less* in proportion as the temptation to commit it is *diminished*.

It would be in the Defendant's favour if the promise had been improvident and thoughtless ; suddenly given, and as suddenly repented ; but the very reverse is in evidence, as she lived with him on these terms for several months, and at the end of them, he repeated his promises, and expressed the fullest approbation of her conduct.—It is further in proof, that she fell into bad health on her discovering the imposition practiced on her, and his disposition to abandon her.—He himself admitted her vexation on that account to be the cause of her illness, and his behaviour under that impres-

sion was base: having determined to get rid of her, he smuggled her out of his own house to her sister's, under pretence that change of air would recover her; and continued to amuse the poor creature with fresh promises and protestations, till, without provocation, and without notice or apology, he married another woman, young enough to be his daughter, and who, I hope, will manifest her affection by furnishing him with a pair of *horns*, sufficient to defend himself against the sheriff when he comes to levy the money upon this verdict.

By this marriage, the poor woman is abandoned to poverty and disgrace; cut off from the society of her relations and friends; and shut out from every prospect of a future settlement in life suitable to her education and her birth; for having neither beauty nor youth to recommend her, she could have no pretensions but in that good conduct and discretion which, by trusting to the honour of the Defendant, she has forfeited and lost.

On all these circumstances, no doubt the Jury calculated the damages, and how can your Lordship unravel or impeach the calculation? They are not like the items in a tradesman's account, or the entries in a banker's book; it is,

For loss of character, so much;—

For loss of health, so much;—

For loss of the society and protection of relations and friends, so much;—

And for the loss of a settlement for life, so much.

How is the Court to audit this account, so as to say, that, in every possible state of it, the Jury has done wrong?—How, my Lord, are my observations, weak as they are as proceeding from me, but strong as supported by the subject, to be answered?—only by ridicule which the facts do not furnish, and at which even folly, when coupled with humanity or justice, cannot smile.—We are, besides, not in a theatre, but in a Court of Law; and when Judges are to draw grave conclusions from facts, which not being under re-examination, cannot be distorted by observation, they will hardly be turned aside from justice by a jest,

I, therefore, claim for the Plaintiff the damages which the Jury gave her under these directions from your Lordship, "*That they were so entirely within THEIR province, that you would not lead their judgments by a single observation.*"

The Rule for a new trial was DISCHARGED.

THE
C A S E
OF THE
BISHOP OF BANGOR
AND OTHERS;
INDICTED FOR A RIOT AND AN ASSAULT.

TRIED AT SHREWSBURY ASSIZES,
ON THE 26TH OF JULY, 1796.

THE exemplary morals and decorum which have so long, to the honour of this country, distinguished the high dignitaries of her national church, bestowed upon the trial of the Right Reverend Prelate, who was the principal object of it, an extraordinary degree of curiosity and interest. Indeed, from a perusal of the whole proceedings, we cannot help thinking, that the Prosecutor might perhaps have been influenced by the expectation that any compromise would have been preferred by the Defendant and his friends, to even a public discussion of such an extraordinary accusation as that of a riot and assault by an English Bishop, assisted by other clergymen of his diocese, within the very precincts of his own cathedral. The Reverend Prelate, however, was not to be intimidated.—He pleaded Not

Guilty to the Indictment, and received the clear acquittal of a Jury of his countrymen.

The Indictment was preferred against the Lord Bishop of Bangor, the Rev. Dr. Owen, the Rev. John Roberts, the Rev. John Williams, and Thomas Jones, Gent.; and was prosecuted by Samuel Grindley, the Deputy Registrar of the Bishop's Consistorial Court.

The Indictment charged that Samuel Grindley, the Prosecutor, was Deputy Registrar of the Consistorial Court of the Bishopric of Bangor, and that being such, he had of right the occupation of the Registrar's office adjoining to the cathedral; that the Bishop and the other Defendants, intending to disturb the Prosecutor in the execution of his office, and to trouble the peace of the King, unlawfully entered into the office, and stayed there for an hour, against the will of the Prosecutor; and it further charged, that they made a disturbance there against the King's peace, and assaulted Grindley, so being Registrar, with intent to expel him from the office.

The Indictment was originally preferred in the Court of Great Sessions, in Wales, where the offence was charged to have been committed, but for a more impartial hearing was removed into the Court of King's Bench, and sent down for trial in the next adjoining county, before a Special Jury, at Shrewsbury, where Mr. Adam and Mr. Erskine attended on special retainers; the former as Counsel for the Prosecution, and the latter for the Bishop and the other Defendants.

In the pursuit of our plan, to preserve some remark-

able Speeches of Lord Erskine, when at the Bar, we felt that we could not, upon this singular occasion, have recourse to a better or more impartial preface, than to introduce, at length, the Speech of Mr. Adam, who conducted the Prosecutor's case with the greatest zeal, ability, and eloquence; his Address to the Jury containing all the facts intended to be proved and relied on; and as the Speech of Mr. Erskine, for the Bishop, comprehends also, the whole body of the evidence as it remained after the examination and cross-examination of the witnesses, and on which, therefore, he rested his Client's claim to acquittal, having called no witnesses on the part of the Defendants, the whole matter for judgment appears most distinctly, from the two Speeches, without the introduction of the proofs; more especially as we have also printed the summing up of the evidence by the Judge.*

* They who may wish to refer to the proofs themselves, will find them in the printed report of the Trial, as taken in short-hand by Mr. Gurney, from which these Speeches are taken, and which was published at the time, by Mr. Stockdale of Piccadilly.

*The KING v. the BISHOP of BANGOR
and others.*

MR. ELLIS opened the Pleadings.

Mr. ADAM for the Prosecution.

MAY IT PLEASE YOUR LORDSHIP
GENTLEMEN OF THE JURY,

You have heard from my Learned Friend, who has opened the pleadings to you, that Samuel Grindley is the Prosecutor, and that he is Deputy Registrar of the Diocese of Bangor.—You have heard, likewise, that the Defendants are, the Bishop of Bangor, three Clergymen, and a gentleman who is Agent for the Bishop.

In the outset of this cause I have already learned enough, from the manner in which my Learned Friends have received the opening of the pleadings, to show me, that they seem to have an inclination, as it were, to make that a jest, which, I can assure you, is a matter of extreme seriousness.—Gentlemen, I introduce it to you with all the anxiety which belongs to a person who is unaccustomed to

address you—I introduce it with the anxiety which belongs to a person, who is to maintain a conflict with abilities that are seldom unsuccessful; but I open it to you, I do assure you, in the pure spirit of moderation and of candour; and, if I might say so in a question of this sort, in the pure spirit of the true principles of Christianity; that is, of wishing that all mankind should do unto others as they wish to see done unto themselves.

Gentlemen, I wish to call your attention to it seriously, and will just take the liberty of stating, why *you* are called upon to judge in this cause.—The question to be tried did not happen within your ordinary jurisdiction: it was not in this county that the offence, which is complained of, took place: but an application has been made to remove it here; and it is possible that such an application might produce some prejudice in your minds, as if there had been something in the conduct of the party, for whom I have the honour to appear, which has made it improper to permit the question to be tried where it arose. The application to remove the cause from Wales to the nearest English county, was made upon an affidavit, which I have not seen, and was granted by Lord Chief Justice Kenyon, who undoubtedly exercised his discretion wisely and justly, as he does upon all occasions. He thought, that, under the circumstances stated by those concerned for the Bishop of Bangor, and upon the affidavit made by those who are prosecuted, without any opposition or

interference of any sort or kind whatever by the person who appears here as the Prosecutor, that it was fit to remove it.—When he did so, I know he removed it to a tribunal of uprightness, of virtue, and honour.—I know he removed it to a situation where, I am confident, intelligence and integrity will alike prevail; and I am by no means afraid of the mere circumstance of its being removed, having any influence upon minds like yours.

Gentlemen, there may have arisen prejudices in this, as there do arise prejudices in many causes. Undoubtedly, this is not the first time that the matter has been the subject of conversation and discourse; probably it is not the first time that even you, who are impannelled to try the cause, may have heard of it. It is my duty to my Client, it is my duty to the public likewise, if there should have been any such conversation about this prosecution, to remove all those prejudices, to remove all the impressions that may have been received, not only from your minds, were it possible you could have received them, but from all those that stand around. I say it is important to my Client, and it is important to the cause of public justice, that I should endeavour to remove them.

Gentlemen, I beg leave to state to you, in the temperate spirit which I have professed, that this is not a question, in which the general religious establishment of the country is at all involved—it is a question, I can assure you, which is confined to the

individuals who appear upon this record. It reaches no further than *their* conduct, on the *particular* occasion. It is a question which cannot, I am sure, have the least effect to the prejudice of that doctrine, or to the prejudice of that rank and situation in the state, which is so important to the well-being of society, and so essential to bind together, and to sustain, those principles which tend, not only to our happiness hereafter, but to the good government of the world in which we now live. I pledge myself, then, that, when you come to hear this case, you will find that the facts I shall prove are confined singly and solely to the parties named in this Indictment.

Gentlemen, there is another circumstance to which I could wish to call your attention, before I enter into the merits of the case—namely, that although a Church Dignitary stands in the front of those indicted, *that* is no reason whatever, why this Indictment should not have been preferred; for if the facts which I have to state to you, and which I shall afterwards prove — if the principles of law which, under his Lordship's direction, I shall have the honour to lay down to you, are correct, you will find that the public justice *must* be satisfied by a verdict of Guilty, notwithstanding the rank and situation of the first individual who is indicted.

It is a painful thing to me, not only on account of his rank and his situation, as a Bishop of the Church and as a Peer of Parliament, to address

you upon a subject of this sort ; but it is more so when I consider, that, in the intercourse of my professional life, I have had frequent occasion to see that person discharging duties in another place, in a judicial and legislative capacity : I have often had the honour, and I will say too the satisfaction, to address him in that station. Gentlemen, I can assure you that I speak with no personal feelings against the Bishop ; they are all naturally on the other side. But what is more, I can assure you that my instructions are, to conduct the cause in a pure spirit of temper and moderation, such as I have already described to you.

Gentlemen, this is not the only time that dignitaries of the church have been indicted, and found guilty. You have but to look back to the bead-roll of the State Trials, and you will find many instances of the sort. You have but to reflect a few years back, when a person, upon an indictment, removed in the same manner, though not a Bishop, yet a dignitary in the church, was brought into this Court, for reasons similar to those which bring you now here to try this Indictment. They who heard my Learned Friend * upon that occasion, they who have read the history of that period, cannot forget the uninterrupted stream of splendid eloquence and of powerful ability, which has been rolling on, with increasing force, from that period to the present

* Mr. Erskine, as Counsel for the Dean of St. Asaph:

moment, and which, then almost in its infancy, was exerted in a question similar to that in which I have now the honour to address you, which marks that there was, within our own memory, in this very place, a prosecution of a church dignitary for a misdemeanor, as there is upon the present occasion.

Gentlemen, I will state plainly why this question is tried, and why you are called to deliver a verdict upon it. It is, in the first place, upon principles of public justice, in order that the justice of the country may be satisfied.—The prosecution is likewise proceeded in, on another principle, which I am sure I am warranted by the law of the land to state as a sound one ; it is founded in an honest, fair, justifiable attempt, upon the part of this Prosecutor, to vindicate his own character through the medium of this prosecution—I say, when I assert that to you, I state a legitimate ground of prosecution, and one that is consistent with the laws of the country : for it is in the power of any individual to use the name of His Majesty for the purposes of public justice ; ay, and for the purpose of vindicating his own character and reputation. It is done every day in the case of libel, and may equally be done in the case of assault, or riot.

The situation of this Prosecutor was, and is, that of a person, who, by industry in his profession, and in the different situations which he held in the part of the country where this offence was committed, gained to himself a livelihood. He found himself

at once in the eye of that public where he lives, in the circle of that community and society to which he belongs (if he did not take some method of bringing this matter forward to the public observation of the country, and of bringing these Defendants forward to receive the public justice of the country), in the risk of being, in all probability, deprived of the honest earnings of his industry, and of the situations which he held for the benefit of himself, and the support of his family.—These are the principles upon which this prosecution is brought forward; these are the principles which do not at all involve any thing of a vindictive spirit; they are principles upon which every honest man daily acts; they are principles upon which every honest man may legally act. Who could have blamed Mr. Grindley if he had brought an action of damages against the Bishop, for the injury he has suffered? What is the situation in which he stands here—not bringing an action for damages indeed, but preferring an indictment? I will venture to say, that, under the circumstances of this crime, and agreeably to the matter charged in this *Indictment*, a prosecution leaves the Defendants more ample means, and a better mode, of defending themselves, than if an *action* had been brought, and they had been put to plead a justification to that action. These are the points to which I wish to call your attention, in order that your minds may come coolly, deliberately, and without prejudice, to the trial of this cause.

Gentlemen, the Indictment, as you have heard, states, that the parties upon this record were guilty of a riot, by entering into, and doing certain acts in the office which belonged to the Prosecutor, as Deputy Registrar of the diocese of Bangor. It states nothing but a riot. There is no count in this Indictment singly for a common assault, although it is the common mode, in drawing indictments of this sort, to conclude with the charge of a common assault, with a view of securing a verdict, in case the facts should not come up to the proof of a riot. I wish to call your attention particularly to this, because it shows, there was no spirit to catch, by a hair, these parties, for conduct, which, if it does not amount to a riot, is not the subject of which this Prosecutor means to complain.

It is necessary for me (and I shall do it very shortly indeed, before I enter into the state of facts which I must lay before you) to explain the law upon the subject of riot.—There are various offences which people commit, congregated together, which receive different denominations in law, from the simple offence of an affray, up to that of a riot, which it may be well for you to know, in order that you may be able to apply the evidence when you come to hear it. The case of an affray, is a matter which arises accidentally, without any premeditation or intent.—The next in order, is an unlawful assembly; that offence consists in persons assembling together, to do some act respecting private property

(not concerning the affairs of the public), and separating without doing any act whatever.—There is another case, commonly denominated a rout, which is, advancing towards the act, without arriving at it.—The highest in order, is a riot; in which there must be these ingredients: in the first place, there must be three or more persons engaged in it; in the next place, there must be an intent and purpose in the parties to commit a riot; and, in the third place, it is essential that it should have for its object some matter of private concern.—When you come to hear the evidence, you will always bear this definition in your mind; which, I am satisfied, my Learned Friend will not contradict, and I am equally satisfied my Lord will support me in, when he comes to address you.

I pledge myself, then, to prove, that the Bishop of Bangor, and the other Defendants upon this record, were guilty of that which I have last described—that there were three or more of them—that they committed a riot, in a matter respecting private property, and that they had an original intent and purpose in the act which they did. With regard to the intent and purpose, you will always observe this—that, intent and purpose may either arise from the facts and circumstances that exist at the time of the transaction, which, by inference, establish a necessary presumption of an original intent; or, it may be made still more palpable to you, by showing a line and tissue of conduct which ne-

cessarily involves that intent and purpose, and, therefore, renders presumption unnecessary, by giving you clear, demonstrative, decided proof, arising from the acts and transactions of the parties establishing a premeditated design, intent, and purpose, in the acts which they did. You will find that this last observation will apply, most materially and forcibly, to the evidence I am about to lay before you, and the circumstances I am about to recite.

I profess, Gentlemen, again and again, that I have no object in view, but making you understand this case; and if, in the course of my address to you, I either elevate my voice, or give into a manner of action that is contrary to the utmost moderation, I trust you will attribute it to habit, and not to intention.—I have no wish, but coolly, deliberately, and calmly, to make you masters of the facts, the circumstances, and principles, upon which this important cause must be decided.

Gentlemen, I have already stated to you, that the Prosecutor of this cause was Deputy Registrar of the consistorial Court of the diocese of Bangor.—It is essentially necessary that I should make you acquainted with the nature of that office; and not only that you should become acquainted with the nature of the offices of Registrar and Deputy Registrar, generally, but that you should likewise be made acquainted with the particular circumstances and local situation of the Prosecutor and his office.

The Deputy Registrar is appointed by the Principal

Registrar.—The general nature of the office of Registrar is, that he has the custody of all the archives and muniments that relate to the spiritual court of the diocese; that is, he is to register all the acts of a juridical nature; and he is, besides *that*, the Registrar of all the wills and testaments of the persons who die within the diocese.—So that, you observe, it is an office of great importance, and extending to the interest and property of a vast portion of the community; that it is an office, where the safe custody of the different archives and muniments is of the utmost consequence.—Certainly, according to the law of the land—according to decided cases to which, if it is necessary, I can refer his Lordship, it is competent to appoint a minor to the situation of Registrar; and, accordingly, the present Bishop of Bangor, upon the resignation of the former Principal Registrar, did appoint a nephew of his, a minor, to be Principal Registrar.—As it is competent to the Bishop to appoint a minor to be Principal Registrar, so it is equally competent that that minor should, by some mode, appoint a deputy.

The reason why a minor can, in this case, deviate from the general rule of law, and do an act appointing a deputy, is, because it follows, from necessity, that the business of the office of Registrar *must* be discharged. If the minor could not appoint, of course the duties of the office could not be discharged, and therefore, *ex necessitate rei*, from the necessity of the case, the minor is at liberty to ap-

point a deputy. But the power of the minor goes no further—there the law stops. The general rule of law is, that a minor can do no act—that he has no will, because he is not supposed to have understanding to act for himself. The exception, in this particular case, is, that the minor does an act for the purpose of appointing his deputy ; but the necessity goes no further. I have it in my power to state to you, from a very recent decision, as well as from the very nature of the thing itself, that this Registrar cannot remove his deputy ; for in this very case an application was made to the Court of King's Bench (and though this may be tedious, it is an important part of this business), an application was made to the Court of King's Bench for a mandamus, calling upon the present Prosecutor, Mr. Grindley, to deliver over to a person, of the name of Roberts, all the muniments within his power, and to deliver up to him likewise the keys of his office, and thereby give him possession of the place where the business is conducted, and where the muniments are preserved.—The result of that application, for the order of the Court to compel this to be done, was, that it was denied by the Court ; and I have the authority to say, from those who heard it, that the ground upon which it was denied was this : Lord Kenyon was of opinion, that it was essentially necessary to apply to the Court of Chancery, to appoint a proper guardian for the minor, that there might be sufficient authority to appoint another Deputy Registrar.

in the stead of Mr. Grindley ; but that he, being in possession of this office, and Mr. Roberts not showing a right to the possession of the office, it was impossible for the Court to grant the order applied for.

I have, then, established clearly, in the first place, that Mr. Grindley was in possession of the office ; and, in the next place, that there was no legal power to remove him.—Consequently, although, from necessity, the minor may appoint in the first instance, yet, if the office of Deputy Registrar is properly discharged, that necessity not existing for the removal, the Deputy Registrar must remain until the Principal arrives at the years of majority ; or until he has such a guardian appointed by the Court of Chancery, as is capable of acting in such a subject matter.

Gentlemen, there is one other circumstance I wish to state respecting the law upon this subject—namely, that where a Registrar is appointed by the Bishop, and a Deputy appointed by the Registrar, and the Principal Registrar is a person not in a situation to act, there is no power and authority, on the part of the Bishop, to remove the Deputy Registrar.—The Bishop, by law, has no power or authority whatever to remove the Registrar or Deputy Registrar, except in the following manner. If the Registrar, or his Deputy, does any act or acts which are, in their nature, contrary to law ; if they do not act consistently with the duties of their office,

then, in that case, undoubtedly, the Bishop may suspend, but his suspension is confined to "a year or more;" and it has been decided, that the words, "or more," do not extend indefinitely to any period, but must be confined to a reasonable period subsequent to the year. Gentlemen, I beg you will bear this position of law in your mind, because you will find, throughout the whole of this cause, that the Bishop has had no fault whatever to find with Mr. Grindley, in the discharge of the duties of his office; for he has never thought him amenable to his jurisdiction for the purposes of suspension; that he must have conceived, therefore, that in the discharge of the duties of his office, he has acted like an honest, faithful guardian of his public trust.—If he had not done so, would not this Bishop, who, as I shall prove hereafter, attempted first by art, and afterwards by force, to remove him from that situation, would he not have made use of his suspending power? Would he not, near the period of the minor Registrar coming of age—which would have been in less than a year from these transactions—would he not, I say, have suspended him for a year or more, in order that the trust might not have been discharged improperly? by which means, the minor, when he arrived at that age of twenty-one, when he would have the free exercise of his own will, might, according to law, have exercised the power of motion over his Deputy at his pleasure, without assigning any cause whatever for the removal?

Gentlemen, it is material, in the discussion of this cause, and most material to your understanding the evidence, that you should know the particular situation of the office ; I mean *the local situation of the place* in which the muniments and records are kept. It is, as I understand, built adjoining to and upon the cathedral church of Bangor ; there is a flight of steps rising to it, and you go through a porch, on which there is an outer door.—Having got within the porch, there is an inner door opens to the registrar-office ; the office is directly opposite to the Bishop's palace ; there is nothing but a courtyard between them ; and it is so near, that every voice, perhaps, may be heard from the one place to the other ; of that, however, I am by no means certain, but it certainly is within sight of the Bishop's palace, adjoining to, and built upon, the cathedral.

I have stated the duties of this office ; I have shown you that they are grave and serious duties : I have stated the responsibilities of this office ; I have shown they are grave and serious responsibilities : I have stated the nature of the muniments kept in this office, and the place in which they are kept : and I contend, I think, without the hazard of contradiction by my Learned Friends, that the person who was thus appointed Deputy Registrar, was irremovable, except by the mode of suspension by the Bishop, in the manner I have mentioned. He was not removable by the minor, but through the medium of

a guardian, which guardian must be appointed by the Court of Chancery.—The Deputy Registrar, thus invested with this office, so charged with those duties, and these responsibilities, had as good a right and title to possess that office—to possess the house or place which I have described, to maintain it,—to take it again if it was taken from him, and to defend himself in it, as any Englishman has to defend his house, which is emphatically denominated his castle. —It is impossible to compare it more accurately. All the circumstances that belong to the sanctuary of a house, belong to the sanctuary of this office. The sanctuary of our house is for our repose, quiet, and security; it is, that we may protect our families: the sanctuary of this office is not, that the family of an individual may be protected, but is for the protection of the interests of an extensive community; it is, that all the devises of personal estates, that all the records in the office of a legal and a judicial nature, that all the interests of a large and important diocese, may be protected. Then, all the arguments for a man's maintaining and defending the possession of his house, apply infinitely stronger to an office charged with such responsibilities.—It is impossible that he can secure, it is impossible that he can maintain that, which is essential for him to justify his conduct towards the public, without maintaining possession of the building, where these things are preserved; and every person who attempts to trespass upon it, is a trespasser in the eye of the

law ; every person who makes a riot in it, is amenable to the justice of his country.

I have described the situation of this office ; it is built adjoining to the cathedral ; the wall of it runs into the wall of the cathedral.—I have described the nature of it ; it is a spiritual office.—Is it possible that any thing can amount more nearly to the description, which the great Roman orator gave as the definition of a house : “ Quid enim sanctius, quid “ omni religione munitius, quam domus uniuscuiusque “ jusque civis ? ” What can be more holy ? What can be more protected by every principle of religion ? —This is a spiritual office—it is a spiritual office carried on in a building annexed, in local situation, to the cathedral church.—Thus annexed by duty, and annexed by situation, it falls in precisely with the comparison I have made ; and shows you, that this gentleman, Mr. Grindley, was bound, for his own sake, for the sake of the public, with whose interests he was intrusted—for the sake of the community of the diocese to which he belonged—by the sacred situation of the place of office, to possess, and protect his possession in it, that the muniments and the archives might be preserved.

Gentlemen, I am sorry I have detained you so long in the preliminary part of this case ; I hope, however, I have not wandered, but have confined myself accurately to the question before you. I think I have done no more than laid that ground, which is necessary for your understanding the facts :

and I now come to state to you, precisely and accurately, what the nature of those facts is. I told you, originally, that I aim only at distinctness. If I have that quality, I have every thing I can wish. In order to be distinct, and in order to show you with what mind and intent this riot was committed, I anxiously entreat your attention to the commencement of the connexion between Mr. Grindley and the Bishop of Bangor.

Early in the year 1792, Mr. Grindley was appointed agent for the Bishop of Bangor. In the month of February of that year, the Bishop appointed his nephew, a minor, to the situation of Registrar of the consistorial court of the diocese. In the month of March 1792, Mr. Grindley was appointed Deputy Registrar. He continued to act in the situation of Deputy Registrar, down to the year 1794, when, for the first time, he saw the minor, who confirmed the appointment, and who treated him as his Deputy Registrar. The bargain was, that Mr. Grindley was to pay his principal seventy pounds a year.—He discharged the regular payments.—He continued to act in his office, without any offence to the Bishop; and that he had committed no offence in his office, is clear, otherwise he, the Bishop, must have suspended him. He continued, I say, to act in the discharge of the duties of his office, down to the autumn of 1795. Here then begins the history which gives origin to this prosecution.

The approach of the general election led the Bi-

shop of Bangor to think, that he might, perhaps, be serviceable to some of his friends; and he thought those immediately under him were likely to be influenced by him.—He applied to Mr. Grindley, for his interest in the county of Caernarvon. His application did not meet with the reception, or with the answer, he expected. Mr. Grindley thought, as I hope every Englishman thinks, that he had a right to the free exercise of his franchise, and the free exercise of his influence; but although he thought so, I can assure you that he behaved with great temper and moderation.—Mr. Grindley now found, that his connexion with the Bishop became a connexion that was not so comfortable, if they were not to agree in their election interests; he thought it right, therefore, to resign the office of Agent to the Bishop; and he accordingly resigned his place of Agent in the month of January.—At the time he did so, he signified expressly, that, on the 22d of February, he would resign the office of Deputy Registrar.—Now, could any thing be more moderate?—You may, perhaps, ask, why he did not resign the office of Deputy Registrar at the time he resigned the situation of Agent? The reason he assigned was this, and it is a valid and substantial reason—that his year of appointment as Registrar ended upon the 22d of February 1796; that, by retaining the office till that time, he should be enabled to make up his accounts, to settle all his business, and then he would quietly take his departure from it.—Could any thing

be more moderate, could any thing more be wished for by the Bishop? If this Registrar had become obnoxious to him, because he did not obey him in matters with which the Bishop, I must say, ought to have had no interference, either as a Bishop or as a Lord of Parliament; if he wished to get rid of Mr. Grindley, might he not have had that patience which ought peculiarly to belong to the character of those, who appear as Defendants upon this indictment? Might he not have had patience for but a little month, till the Deputy Registrar voluntarily resigned his office? There is something in this conduct of the Bishop, which it is almost impossible to account for, unless one were to dive into those speculations, which have led one to know what the motives, and what the feelings of men are, in different situations of life, and in different characters in society.

I recollect a very profound and a very wise saying, equally true as wise, with respect to the clergy. It was said of them, "That they had found, what Archimedes only wanted, another world, on which to fix their fulcrum, by which they moved this world at their pleasure."—That saying will go far to expound this conduct. In all spiritual matters, it is a wise, a just, a true maxim, calculated to show the true principles upon which the clergy possess, and truly and justly, and eminently and beneficially to the society in which we live, possess that influence upon mankind, which ought to belong to their

character and situation in all spiritual affairs—but when they travel from spiritual to temporal concerns—when they quit the affairs of the other, and look only to the concerns of this world; when they interfere in politics above, or in elections below, then that character, which directs their influence in the clerical function, unfortunately follows them into their temporal concerns. If they are disappointed, they cannot brook it.—They have been taught to regard mankind as persons whom they are to govern at their pleasure—they are incapable of smoothing the matter over, as men, more accustomed to the ordinary concerns of life, are; and their spiritual power uniformly follows them into temporal concerns, if they are imprudent enough to mix in them. This is vouched by the history of the world, in all ages; it is vouched peculiarly by the history of this country. Who ever heard of Sherlock or Lowth interfering in such matters? No! They were enabled to move this world at their pleasure, because their lives were spiritual and holy. Who has not heard that Wolsey and Laud were of a different character and description? The *Ego et Rex meus* of Wolsey, and the violence of Laud, against the privileges of the people of England, are equally to be collected from that witty, wise, and just maxim to which I have alluded. Such is the situation of the persons concerned.—Gentlemen, it does not signify whether the scene is in the world at large, or in the county of Caernarvon; whether it is trans-

acted in the palace of Whitehall, or in the churchyard of Bangor ;—the same causes, in the hand of the Supreme Being, directing this world to its good, will always produce the same effects ; and I cannot account for the Bishop not having accepted of this moderate, of this attentive, of this happy proposition (I might almost say, if it had been accepted) of the Deputy Registrar, but that he had deviated, from what he does not, I am sure, often deviate from,—from spiritual to temporal concerns ;—that he had forgot the concerns of that pure and humble religion, of which he is an eminent pastor, and that he had been drawn aside by the peculiar interests of friendship, by the strong ties of connexion, or by something else, in order to act in the manner which I have described to you.

In fact, the resignation has not been made at all ; and the transactions, which I am about to relate, will show the reasons why it has not been made, and will prove, that it was not possible to have been made with safety. Mr. Grindley found, the Bishop had become hostile to him ; he found, he was no longer safe in resigning it into hands, that could not legally accept the resignation ; he found, he could not have that confidence, which would have taken place, if it had been left to his own freedom and choice ; and that, after he had resigned into the hands of a minor, he would, in point of law, have retained all the responsibilities of the office, without being, in fact, in the office, to discharge the duties :

—Therefore it is, he has not resigned the office. But the transaction which I am about to state to you, and I am now come to the real question in the cause (though I humbly think, under his Lordship's direction, that nothing I have said is irrelevant)—the transaction I am about to state to you, will unfold the whole.

Between the fourth and the eighth of January 1796, which you see was a month previous to the term of the proposed resignation, these transactions took place.—First of all, the Bishop, in the absence of Mr. Grindley, the Deputy Registrar, sent for the seals; and he obtained one seal. I think the other seal Mr. Grindley's clerk had not in his possession, and it was not delivered.—This was intimated to Mr. Grindley; and Mr. Grindley, imagining that the Bishop, having obtained one seal, might possibly attempt to obtain the keys; he, therefore, being at that time in Anglesey, wrote to his clerk to beware not to give the Bishop the key of the office if he asked for it. The Bishop did ask for it; and was refused.—Upon the 7th of January, Mr. Grindley returned, and found that his office had been broken into.—He ascertained, as I shall prove, from the Bishop's own mouth, that the Bishop had given directions to break open the window of the office, to take the locks off the door, and put on other locks.—In this situation Mr. Grindley found himself, respecting an office, for the duties of which he was legally responsible; for he is, both in law and in fact, Deputy Registrar,

and has been so from the year 1792, down to the present time, without any attempt to cast a slur on his character in the discharge of his duties.

Gentlemen, I come now to the principal facts ; and I can assure you I will act in the spirit which I professed at the outset. I wish to state every thing candidly to you ; I have nothing to hold back. I do not mean to say that, upon every occasion, it is possible to justify persons in their transactions for moderation and for prudence ; and yet I think, when you examine the transactions of Mr. Grindley, you will see, under all the circumstances, that they were neither immoderate nor imprudent.—Mr. Grindley's offer of resignation had been scoffed at, and rejected.—He had been treated in such a way as to make it natural to suppose that he would be exposed as a culprit, in the discharge of his duty, to the whole community to which that duty appertains. He found, that it was essentially necessary for him to know in what state the muniments and archives were, which he alone had a right to the possession of.—He found the means of entrance debarred, and, therefore, determined to get admission to the office ; and, having got admission, he determined to maintain himself in the possession of it, as he had a full right to do.

In the morning of the 8th of January, Mr. Grindley went to the office, with the means of getting admittance into it.—You will observe, that the first attempt to get possession of the office had been

on the part of the Bishop.—You will always recollect, that the Bishop has no earthly right to the possession of the muniments of that office, as long as the Registrar properly discharges the duty of the office.—He has no right to keep the Registrar out of his office, but the Registrar has a right to keep all mankind out of it, except those who come upon business, and except the Bishop when he comes in the discharge of his duty *as Bishop of Bangor*.—Mr. Grindley imagined, from the violence that had taken place before, that is to say, from the violent breaking into the office originally, and from the offer of compromise on his part, and even of resignation, being wholly rejected, he imagined, and it was natural so to imagine, that force would be opposed to force, when he once got possession of his office; and therefore, undoubtedly, Mr. Grindley went provided, so as to secure himself against the possibility of that force depriving him of his office.—Gentlemen, I insist, that when he was in possession of his office, he had a right so to do. All this will be proved—I say it will be proved: because I know Mr. Grindley, who is the first witness, is a person beyond the suspicion of not acting agreeable to his oath.—The oath is, “that he shall speak the truth, the whole truth, and nothing but the truth.”—It has been uniformly expounded, that a person, who does not speak the whole truth in a court of justice, is as criminal as he who speaks a direct falsehood.—I feel myself bound in duty and in conscience, as an advo-

cate, to state to you the whole truth ; and Mr. Grindley is a man of that conscience, that he will speak the whole truth in the manner in which the thing happened. It will then be for you to judge, under all the circumstances ; and I think that, whatever opinion you may form with regard to Mr. Grindley's rashness in his manner of getting possession of the office, and his determination to maintain possession of it, you will be convinced, that the Bishop and those indicted, were in fact guilty of a riot, for endeavouring to get possession of it, and coming and interrupting him in the manner I shall describe and prove.

Mr. Grindley went with pistols in his pocket ; but it will be proved, *these pistols were unloaded*.—Now, I can assure my friends (whatever gestures they may make) that I am not in the least afraid of this fact.—I say, his going with *unloaded* pistols, proves, that he had, in regard to getting possession of the office, no intent of offence whatever.—He took powder and shot, with which, when he got possession, he loaded his pistols—which proves that he was determined, being in peaceable possession of his office, to maintain that possession ; and I contend, that the Deputy Registrar of the diocese, under the circumstances I state, had a right so to do.—I say, that every argument, every fact which applies to the case of a man's own house being his castle, applies to this case.—Mr. Grindley, after he had opened the outer door in the porch, in order to prevent any riot, and

for the purpose of intimidation, threatened one of the persons who came from the Bishop's house to interrupt him, with an unloaded pistol; for it will be proved, that the pistols were loaded at a *subsequent time*. After this first attempt to disturb him, there was a considerable interval; and during this interval Mr. Grindley got into the inner door. Mr. Grindley being thus in the office, the Bishop and various of his servants arrived.—The Bishop hollowed with a voice so loud (as will be proved to you) that Mr. Grindley did not know it; his passion was so vehement, that it was absolutely impossible to distinguish his voice.—The moment Mr. Grindley knew it was the Bishop, he said he had no objection to the Bishop's being let in, and he desired his servants quietly and peaceably to retire to a further corner of the room.—Mr. Grindley then came forward, and said, that whatever business was to be done, he was ready to do it; that he considered himself as the legal officer, and he was then in the quiet possession of his office; that, with regard to his Lordship, he was perfectly willing he should come into the office, but he begged that his Lordship's boisterous and tumultuous conduct might cease.—I really wish, rather that the witnesses should describe what passed afterwards, than that I should.—But instead of that tumultuous conduct ceasing, the Bishop approached first to Mr. Grindley, afterwards to his servants, with threatening gestures, and with threatening words, laying his hands upon them;

and he was assisted by the four other persons indicted, who afterwards came into the office, whose actions and words were precisely of the same kind and description.

Gentlemen, one of the grounds of riot which you have to try, is this, That here was a person, legally entitled to the possession of his office, illegally forced from that office; he had taken possession of this office, and remained in the quiet possession of it.—Now, whether he did so in a manner that a perfectly calm and unconcerned spectator may approve of, as an abstract case, I do not know; but I am addressing myself to persons who have human passions; I am addressing myself to Gentlemen, who know what human nature is; and I am sure, that in an outrage of this sort, committed after a voluntary offer of resignation, such as I have stated; after a conduct so peaceable and quiet, even a worm, if trod upon, would have turned again.—Mr. Grindley had got quietly into the possession of his office, and then, after a lapse of time, this office was again attacked in the riotous, tumultuous, and extraordinary manner which the witnesses will state, but which I forbear detailing, because, in the first place, it is unnecessary for your understanding the cause, and in the next place, it is painful for me to state it. This disturbance went on a considerable time, and at last it ended only by persons, whose sex and character I have too great a respect for, to introduce them into the cause, more than just to say, that by

the intervention of Mrs. Warren and two ladies, the Bishop was at last quieted from his passion, and withdrawn from the riot. There the business ended. Gentlemen, this is the case which you have to try; and I think I can venture to say, that if the facts are proved in the manner I have described, and I take upon me to say I have stated them most correctly, it is impossible for you not to find a verdict for the Prosecutor.

Gentlemen, it would be in vain, and an absurd thing in me, to detain you with any particular address to yourselves. I have the honour of knowing hardly any of you personally, although among the Jury there are some gentlemen whom I have had an opportunity of seeing in another scene in life. I know your characters, and I know that however you may feel yourselves bound to protect the ministers of our church, though I think this prosecution can have no effect upon any but the particular churchmen engaged in this transaction, that you will yet guard yourselves against deviating from those principles according to which you are bound to act, and that you will find according to the evidence.

Gentlemen, there is no principle implanted in the human mind, stronger than the sympathy which we feel for the situation and sufferings of persons of high rank and condition: it is one of those principles that bind society together; and is most admirably infused into our nature, for the purposes of good government, and the well-being of

civil order.—But whatever the rank may be, that rank can never stand between a defendant and the proof of the fact, with a jury of Englishmen. They know their duty too well : neither compassion, sympathy, nor any other principle, can possibly affect their minds.—Consider what is the peculiar situation of these Defendants ; reflect, that they are set apart by the laws of the land, and the regulations of the Christian religion, for the purpose of preaching the doctrines of Christ. Our law has been so peculiarly cautious with respect to their character, that even when it empowers the civil magistrate to quell a riot by calling to his assistance every other member of the community, it peculiarly excepts, with women and children, the clergy. I have brought before you persons of that description, who, instead of claiming an exemption from being called upon, have themselves been guilty of a riot ; for which they are justly amenable to the laws of their country.

After the examination of the witnesses, and the close of the Prosecutor's case, Mr. ERSKINE spoke as follows :

GENTLEMEN OF THE JURY,

My Learned Friend, in opening the case on the part of the Prosecution, has, from personal kindness to me, adverted to some successful exertions in the duties of my profession, and particularly in this place. It is true, that I have been in the practice of the law for very many years, and more than once, upon memorable occasions, in this Court; yet, with all the experience which, in that long lapse of time, the most inattentive man may be supposed to have collected, I feel myself wholly at a loss in what manner to address you. I speak unaffectedly when I say, that I never felt myself in so complete a state of embarrassment in the course of my professional life;—indeed, I hardly know how to collect my faculties at all, or in what fashion to deal with this most extraordinary subject. When my Learned Friend, Mr. Adam, spoke from *himself*, and from the emanations of as honourable a mind as ever was bestowed upon any of the human species, I know that he spoke the truth when he declared his wish to conduct the cause with all charity, and in the true spirit of Christianity.—But his duties were scarcely compatible with his intentions; and we shall, therefore, have, in the sequel, to examine how much of his speech was *his own* candid address, proceeding from *himself*; and what part of it may be considered as arrows from the quiver of his CLIENT.

—The cause of the Bishop of Bangor can suffer nothing from this tribute, which is equally due to friendship and to justice:—on the contrary, I should have thought it material, at any rate, to advert to the advantage which Mr. Grindley might otherwise derive from being so represented.—I should have thought it right to guard you against blending the Client with the Counsel.—It would have been my duty to warn you, not to confound the one with the other, lest, when you hear a liberal and ingenuous man, dealing, as he does, in humane and conciliating expressions, and observe him with an aspect of gentleness and moderation, you might be led by sympathy to imagine that such were the feelings, and that such had been the conduct, of the man whom he represents*.—On the contrary, I have no difficulty in asserting, and I shall call upon his Lordship to pronounce the law upon the subject, That you have before you a prosecution, set on foot without the smallest colour or foundation—a prosecution, hatched in mischief and in malice, by a man, who is, by his own confession, a disturber of the public peace; supported throughout by persons who, upon their own testimony, have been his accom-

* No observation can be more just than this.—It is the most consummate art of an advocate, when he knows that an attack is likely to be made upon his Client for turbulence and malice, to make the Jury think, by his whole speech and demeanour, that mildness and justice were his characteristics; and Mr. Adam appears, with great ability, to have fulfilled this duty.

plices, and who are now leagued with him in a conspiracy to turn the tables of justice upon those, who came to remonstrate against their violence, who honestly, but vainly, endeavoured to recall them to a sense of their duty, whose only object was to preserve the public peace, and to secure even the sanctuaries of religion from the violation of disorder and tumult.

What then is the cause of my embarrassment?—It is this.—In the extraordinary times in which we live; amidst the vast and portentous changes which have shaken, and are shaking the world; I cannot help imagining, in standing up for a Defendant against such Prosecutors, that the religion and order, under which this country has existed for ages, had been subverted; that anarchy had set up her standard; that misrule had usurped the seat of justice, and that the workers of this confusion and uproar had obtained the power to question their superiors, and to subject them to ignominy and reproach, for venturing only to remonstrate against their violence, and for endeavouring to preserve tranquillity, by means not only hitherto accounted legal, but which the law has immemorially exacted as an INDISPENSABLE DUTY from all the subjects of this realm. Hence, it really is, that my embarrassment arises; and, however this may be considered as a strong figure in speaking, and introduced rather to captivate your imaginations, than gravely to solicit your judgments, yet let me ask you, Whether it is not the most natural train of ideas that can occur to any

man, who has been eighteen years in the profession of the English law ?

In the first place, Gentlemen, Who are the parties prosecuted and prosecuting ?—What are the relations they stand in to each other ?—What are the transactions, as they have been proved by themselves ?—What is the law upon the subject ?—and, What is the spirit and temper, the design and purpose of this nefarious prosecution ?

The parties prosecuted are, the Right Reverend Prelate, whose name stands first upon the Indictment, and three ministers and members of his church, together with another, who is added (I know not why) as a Defendant.—The person prosecuting is—(*how shall I describe him ?*)—For surely my Learned Friend could not be serious, when he stated the relation between this person and the Bishop of Bangor.—He told you, most truly, which renders it less necessary for me to take up your time upon the subject ;—that the Bishop is invested with a very large and important jurisdiction—that, by the ancient laws of this kingdom, it extends to many of the most material objects in civil life ; that is, has the custody and recording of wills, the granting of administrations, and a jurisdiction over many other rights, of the deepest moment to the personal property of the King's subjects.—He told you, also, that all these complicated authorities, subject only to the appellate jurisdiction of the Metropolitan, are vested in the Bishop.—To which he might have

added (*and would, no doubt, if his cause would have admitted the addition*), that THE BISHOP HIMSELF, and not his temporary clerk, has, in the eye of the law, the custody of the records of his church; and that he also is the person whom the law looks to, for the due administration of every thing committed to his care;—his subordinate officers being, of course, responsible to *him* for the execution of what the law requires at *his* hands.

As the King himself, who is the fountain of all jurisdictions, cannot exercise them himself, but only by substitutes, judicial and ministerial, to whom, in the various subordinations of magistracy, his executive authority is delegated; so in the descending scale of ecclesiastical authority, the Bishop also has *his* subordinates to assist him judicially, and who have again *their* subordinate officers and servants for the performance of those duties committed by law to the Bishop himself; but which he exercises through the various deputations which the law sanctions and confirms.

The Consistory Court, of which this man is the Deputy Registrar, is the BISHOP'S COURT.—For the fulfilment of its duties, the law has allowed him his chancellor and superior judges, who have under them, in the different ecclesiastical divisions, their surrogates, who have again their various subordinates; the *lowest*, and *last*, and *least* of whom, is the Prosecutor of this Indictment; who nevertheless considers the cathedral church of Bangor, and the

Court of the Bishop's see, as his own CASTLE ; and who, under that idea, asserts the possession of it, *even to the exclusion of the Bishop himself*, by violence and armed resistance !—Do you wonder now, Gentlemen, that I found it difficult to handle this preposterous proceeding ?—The Registrar himself (putting deputation out of the question) is the very lowest, last, and least of the creatures of the Bishop's jurisdiction ; without a shadow of jurisdiction himself, either judicial or ministerial.—He sits, indeed, amongst the records, because he is to register the acts which are there recorded ; but he sits there as *an officer of the Bishop*, and the office is held under the chapter part of the cathedral, and within its consecrated precincts, where the Bishop has a jurisdiction, independent of all those which my Friend has stated to you—a jurisdiction, given to him by many ancient statutes, not merely for preserving that tranquillity which civil order demands every where ; but to enforce that reverence and solemnity, which religion enjoins, within its sanctuaries, throughout the whole Christian world.

Much has been said of the Registrar's freehold in his office :—but the term which he has in it—*viz.* for life—arose originally from an indulgence to the Bishop who conferred it ; and it is an indulgence which still remains, notwithstanding the restraining statute of Elizabeth.—The Bishop's appointment of a Registrar is, therefore, binding upon his successor ;—but how binding ?—Is it binding to exclude the

future Bishop from his own cathedral?—Is it true, as this man preposterously supposes, that, because he chooses to put private papers of his own, where no private papers ought to be—because he thinks fit to remove them from his own house, and put them into the office appointed only for the records of the Public—because he mixes his own particular accounts with the archives of the diocese—that therefore, forsooth, he has a right to oust the Bishop from the offices of his own Court, and, with pistols, to resist his entrance, if he comes even to enjoin quiet and decency in his church?—Surely Bedlam is the proper forum to settle the rights of such a claimant.

The Bishop's authority, on the contrary, is so universal throughout his diocese, that it is laid down by Lord Coke, and followed by all the ecclesiastical writers, down to the present time, that though the freehold in every church is in the parson, yet *that* freehold cannot oust the jurisdiction of the Ordinary, who has a right, not merely to be present to visit the conduct of the incumbent, but to see that the church is fit for the service of religion: and so absolute and paramount is his jurisdiction, that no man, except by prescription, can even set up or take down a monument, without his license; the consent of the parson, though the freehold is in him, being held not to be sufficient. The right, therefore, conferred by the Bishop on the Registrar, and binding (as I admit it to be) upon himself and his successor, is the right to perform the functions of the office, and to receive

the legal emoluments.—The Registrar may also appoint his Deputy, but not in the manner my Learned Friend has affirmed; for the Registrar can appoint no Deputy without the Bishop's consent and approbation. My Learned Friend has been also totally misinstructed with regard to the late judgment of the Court of King's Bench on the subject.—He was not concerned in the motion; and has only his report of it from his Client.—Mr. Grindley was represented in that motion by a Learned Counsel, who now assists me in this Cause, to whom I desire to appeal.—The Court never pronounced a syllable which touched upon the controversy of to-day; on the contrary, its judgment was wholly destructive of Mr. Grindley's title to be Deputy—for it held, that the infant, and not his *natural* guardian, had, with the Bishop's approbation, the appointment of his Deputy; whereas Mr. Grindley was appointed by his *father only*, and not by the infant at all, which my friend well knew, and, therefore, gave parol evidence of his possession of the office, instead of producing his appointment, which would have been fatal to his title: and the reason why the Court refused the mandamus, was, ~~because~~ Mr. Roberts, who applied for it, was not a legal deputy. It did not decide, that the Prosecutor ~~was~~ the legal officer, but only that Mr. Roberts *was not*; and it decided that he *was not*, because he had only the appointment of the infant's father, which was, by the bye, the only title which the Prosecutor had himself: and although the infant was a lunatic,

and could no longer act in that respect for himself, yet the Court determined that his authority did not devolve to the father, but to the Court of Chancery, which has, by law, the custody of all lunatics.

This judgment was perfectly correct, and supports my proposition, That the Prosecutor was a mere tenant at will of the Bishop.—The infant can, indeed, appoint his Deputy, but not *ex necessitate rei*, as my Friend supposes; on the contrary, he will find the reason given by the Court of King's Bench, as far back as the reign of Charles the First, as it is reported by that great magistrate, Mr. Justice Croke. It is there said, that an infant can appoint a deputy, *because the act requires no discretion, the approbation, which is tantamount to the choice, being in the Bishop.*—The continuance must, therefore, in common sense, be in the Bishop also; for otherwise, the infant having no discretion, a proper person might be removed indiscreetly, or an improper person might never be removed at all.—I maintain, therefore, on the authority of the ancient law, confirmed by the late decision of the Court of King's Bench, *in this very case*, that the Prosecutor, who is so forward to maintain a privilege, which he could not have maintained, even if he had been Judge of the Court, and Chancellor of the Diocese, had, in fact, no more title to the office than I have.—He tells you, himself, that he never had any appointment from the infant, but from the father only, with the infant's and the Bishop's approbation; in other words, he

was the deputy *de facto* : but, as such, I assert he was a mere tenant at will ; and, consequently, he came, to all intents and purposes, a private man, from the moment the Bishop signified his determination to put an end to his office ; and that the Bishop had signified his determination before the transaction in question, Mr. Grindley has distinctly admitted also. I thought, indeed, I should be more likely to get that truth from him, by concealing from him the drift of my examination ; and he, therefore, swore, most eagerly, that the Bishop did not offer him the key at the palace ; but that, on the contrary, he had told him distinctly, that he was no longer in the office. He says, besides, that the Bishop expressed the same determination by a letter ; in answer to which he had declared his resolution to hold it till the year expired.—I say, therefore, that the Prosecutor, at the time in question, was not Deputy Registrar, and that, the infant being a lunatic, the Bishop had a right to give charge of the office till another was duly appointed.—This point of law I will put on the record, if my Friend desires it.

But why should I exhaust myself with this collateral matter ; since, in *my* view of the subject, it signifies nothing to the question we have to consider ? It signifies not a farthing to the principles on which I presently mean to rest my defence, whether he was an usurper, or the legal deputy, or the infant himself with his patent in his hand.

Let us now, therefore, attend to what this man did; whatever character belonged to him.—This is principally to be collected from the Prosecutor's own testimony, which is open to several observations. My Learned Friend, who stated to you in his absence, the evidence he expected from him, explained, with great distinctness, the nature and obligation of an oath; and, speaking from *his own* honest sensations, and anticipating the evidence of his Client, from the manner *HE* would, as a witness, have delivered his own,—he told you, that you would hear from him, a plain, unvarnished statement—that he would keep back from you no circumstance, nor wish to give a colour to any part of the transaction.—What induced my Friend to assure us, with so much solicitude, that his witness would adhere so uniformly to the truth, I cannot imagine, unless he thought that his evidence stood in need of some recommendation.—All I can say is, that he did not in the least deserve the panegyric which was made upon him, for he did not give an *unvarnished* statement of the very beginning of the transaction, which produced all that followed.—I asked him, Whether, in refusing the key, he did not mean to keep an exclusive possession of the office, and to prevent the Bishop even from coming there?—But, observe how the gentleman fenced with this plain question—"I *did not*," he said, "*refuse him the key, but only lest he should take possession.*"—I asked him again, "If he did not positively refuse the key?"—and desired

the answer to be taken down.—At that moment my friend, Mr. Manly, very seasonably interposed, as such a witness required to be dry-nursed ; and at last he said, “ *Oh, the key was included.*”

The Bishop, therefore, was actually and wilfully excluded wholly from the office. For, notwithstanding Mr. Grindley’s hesitation, Mr. Sharpe, who followed him, and who had not heard his evidence, *from the witnesses being kept apart*, swore DISTINCTLY AND AT ONCE, that the key was taken from Dodd, because Grindley thought he would let the Bishop have it ; and the witness said further—(*I pledge myself to his words*)—“ IT WAS, THEREFORE, DELIVERED INTO MY CUSTODY, AND I REFUSED IT TO THE BISHOP—I DID SO BY MR. GRINDLEY’S DIRECTION, UNDOUBTEDLY.”—

The very beginning of the transaction, then, is *the total exclusion of the Bishop from his own court, by a person appointed only to act as Deputy, by his own consent, and during his own will ; WHICH WILL he had absolutely determined before the time in question.* I am, therefore, all amazement, when it shoots across my mind, that I am exhausting my strength in defending the Bishop ; because, most undoubtedly, I should have been Counsel for *him* as a *Prosecutor*, in bringing his opponents to justice.—According to this new system, I would have THE JUDGES take care how they conduct themselves. The office-keepers of the records of the Courts at Westminster, are held by patent ; even the Usher’s

place of the Court of King's Bench is for life ; he too is allowed to appoint his deputy, who is the man that puts wafers into our boxes, and papers into our drawers, and who hands us our letters in the cleft of a stick.—But, nevertheless, I would have their Lordships take care how they go into the Court of King's Bench, which, it seems, is this man's CASTLE.—If Mr. Hewit were to make a noise and disturb the Court, and Lord Kenyon were to order him to be pushed out, I suppose we should have his Lordship at the next assizes for a riot.—Suppose any of the Judges wished to inspect a record in the Treasury Chamber, and the clerk should not only refuse the key, but maintain his possession with pistols ; would any man in his senses argue that it was either indictable or indecent to thrust him out into the street ?—yet, where is the difference between the attendants on a court civil, and a court ecclesiastical ? Where is the difference between the Keeper of the Records of the Court of King's Bench, or Common Pleas, and the Registrar of the Consistory of Bangor ?

To all this I know it may be answered, That these observations (supposing them to be well founded) only establish the Bishop's right of entry into his office, and the illegal act of the Prosecutor in taking an exclusive possession ; but that they do not vindicate the Bishop for having first taken off the lock in his absence, nor for afterwards disturbing him in the possession which he had peaceably regained ; that

the law was open to him, and that his personal interference was illegal.

To settle this point, we must first have recourse to facts, and then examine how the law applies to them.

It stands admitted, that though Mr. Grindley knew that the Bishop had determined his will, and had insisted on his surrender of his situation, which he never held but by the Bishop's sufferance, he absolutely refused the key, with the design to exclude him from the office.—It was not till *then*, that the Bishop, having no other means of access, ordered the lock to be taken off, and a new key to be made.—Now, whether this act of the Bishop's was legal or illegal, is wholly beside the question—his Lordship is not charged with any force or illegality on *that* account; he is not accused even in the Counsel's speech, with any impropriety in this proceeding, except an intrusion into this imaginary castle of Mr. Grindley.—It is admitted, in short, that the Bishop took a possession *altogether peaceable*.

His Lordship then, having removed the Deputy Registrar, without due authority, if you please, and being (if you will, for any thing which interests my argument) in possession, contrary to law, let us see what follows.—And in examining this part of the evidence, *upon which, indeed, the whole case depends*, I am not driven to the common address of a Counsel for a Defendant in a criminal prosecution; I am not

obliged to entreat you to suspend your judgments till you hear the other side—I am not anxious to caution you to withhold implicit credit from the evidence, till the whole of it is before you.—No, Gentlemen—I am so far from being in that painful predicament, that though I know above half of what you have heard is not true; although I know that the transaction is distorted, perverted, and exaggerated in every limb and member; yet I desire that you will take it as it is, and find your verdict upon the foundation of its truth.—Neither do I desire to seduce your judgments, by reminding you of the delicacy of the case.—My Friend declares he does not know you personally, but that he supposes you must have a natural sympathy in protecting a person in the Bishop's situation against an imputation so extremely inconsistent with the character and dignity of his order.—It is natural, as decent men, that you should; and I, therefore, willingly second my Learned Friend in that part of his address.—I solemnly conjure you also to give an impartial judgment—I call upon you to convict or acquit, according to right and justice.—God forbid, that you should not! —I ask no favour for my Client because he is a prelate, but I claim for him the right of an English subject, to vindicate his conduct under the law of the land.

The Bishop, then, being in peaceable possession, what is the conduct of the Prosecutor, even upon his own confession?—He sends for three men; two

of whom he calls domestics ; one of them is his *domestic blacksmith*.—He comes with them, and others, to the office, with PISTOLS, and provided with POWDER AND SHOT.—Now, *quo animo* did they come?—I was really so diverted with the nice distinction of Mr. Grindley, in his answer to this question, that I could scarcely preserve my gravity.—He said, “ I came, it is true, with pistols, and with “ powder and shot, to take possession ; but—mark— “ I did not *load* my pistols in order to *take* possession “ —I did not load them till *after* I had it, and then “ only to *keep* the possession I had peaceably taken.” —This would be an admirable defence at the Old Bailey.—A man breaks into my house in the day, to rob me of my plate *—(this is but too apt a quotation, for so I lost the whole of it)—But this felon is a prudent man, and says to himself—I will not *load* my fire-arms till I have got into the house and taken the plate, and then *I will load them*, to defend myself against the owner, if I am discovered.—This is Mr. Grindley’s law ;—and, therefore, the moment he had forced the office, he loaded his pistols, and called aloud repeatedly, that he would blow out the brains of the first man that entered.—A pistol had before been held to the breast of one of the Bishop’s servants ; and things were in *this* posture when the Bishop came to the spot, and was admitted into the office.—The lock which he had affixed he found

* It seems Lord Erskine’s house, in Serjeant’s Inn, had been recently broken open, and his plate all stolen.

taken off, the doors forced open, and the apartment occupied by armed men, threatening violence to all who should oppose them.

THIS IS MR. GRINDLEY'S OWN ACCOUNT.—He admits, that he had loaded his pistol *before the Bishop came*; that he had determined to stand, *vi et armis*, to maintain possession by violence, and by death if necessary; and that he had made that open declaration in the hearing of the Bishop of the diocese.—Perhaps Mr. Grindley may wish, hereafter, that he had not made this declaration so public; for, whatever may be the *Bishop's* forbearance, yet the criminal law may yet interpose by other instruments, and by other means.—Indeed, I am truly sorry to be discussing this matter for a *Defendant in July*, which ought to have been the accusation of a *Prosecutor six months ago*, if the public peace of the realm had been duly vindicated.

The Bishop, then, being at the door, and hearing his office was taken possession of by force, and by the very man whom he had displaced, the question is, Did he do *more* than the law warranted in that conjuncture?—I maintain, that, from over-forbearance, he did *much less*.—If in this scene of disorder the records of the diocese had been lost, mutilated, or even displaced, the Bishop, if not legally, would at the least have been morally responsible.—It was his duty, besides, to command decency within the precincts of his church, and to remove at a distance from it all disturbers of the peace.—And what, after

all, did the Bishop do?—He walked up and down, remonstrating with the rioters, and desiring them to go out, having before sent for a magistrate to act according to his discretion.—It is true, Mr. Grindley worked himself up to say, that the Bishop held up his fist so (*describing it*); but, with all his zeal, he will not venture to swear he did so with a *declaration*, or even with an *appearance*, of an intention to strike him.—The whole, that he can screw up his conscience to, is, to put the Bishop in an attitude, which is contradicted by every one of his own witnesses—who all say, that the Bishop seemed much surprised, and walked to and fro, saying, “This is fine work!”—and moving his hands backwards and forwards, thus (*describing it*). Does this account at all correspond with Mr. Grindley’s? or does it prove an attitude of force, or even an expression of passion? On the contrary, it appears to me the most natural conduct in the world. They may fancy, perhaps, that they expose the Bishop when they impute to him the common feelings, or, if you please, the indignation of A MAN, when all order is insulted in his presence, and a shameless outrage committed in the very sanctuary which he is called upon, by the duty of his office, and the dignity of his station, to protect.—But is it required of any man, either by human nature, or by human laws (whatever may be the sanctity of his character), to look at such a proceeding unmoved? Would it have been wrong, or indecent, if he had even FORCIBLY removed them?

I SAY, IT WAS HIS DUTY TO HAVE DONE SO, WHOEVER WERE THE OFFENDERS ; whether the Deputy Registrar, the Registrar himself, or the highest man in the kingdom.

To come at once to the point : I maintain, that, at the time the Bishop came to the door, at which very moment Grindley was threatening to shoot the first person that entered, which made somebody say, " Will you shoot the Bishop ?"—I maintain, at that very moment THREE indictable offences were committing, which put every man upon the level of a magistrate, with regard to authority, and even prescribed a duty to every man to suppress them. In the first, there was AN AFFRAY ; which my Friend did not define to you, but which I will.—Mr. Serjeant Hawkins, transcribing from the ancient authorities, and whose definition is confirmed by every day's practice, defines an affray thus : " It is an " affray, though there is neither actual violence nor " threat of violence, where a man arms himself with " dangerous weapons in such a manner as will naturally cause terror ;"—and this was always an offence at common law, and prohibited by many statutes.

Let us measure Mr. Grindley's conduct, upon his own account of it, by the standard of this law, and examine whether he was guilty of an affray. He certainly threatened violence ; but I will throw him in that, as I shall examine his threatening when I present him to you in the character of a rioter.—I

will suppose, then, that he threatened no violence ; yet he was armed with dangerous weapons in such a manner as would naturally create terror.—He tells you, with an air of triumph, that he brought the arms for that express purpose, and that he dispersed those who came to disturb him in his CASTLE. He was, therefore, clearly guilty of an affray.

Let us next see what the law is, as it regards all the King's subjects, when an affray is committed. The same authorities say,—(*I read from Mr. Serjeant Hawkins, who collects the result of them*), “ That any private man may stop and resist all persons engaged in an affray, and remove them ; that “ if he receive a hurt in thus preserving the peace, “ he may maintain an action for damages ; and that, “ if he unavoidably hurt any of the parties offending “ in doing that which the law both allows and commends, he may well justify it, for he is no ways in “ fault.”—Setting aside, therefore, the office and authority of the Bishop, and the place where it was committed, and considering him only as a private subject, with no power of magistracy, he had a right to do—not that which he did (*for in fact he did nothing*)—he had a right to remove them by main force, and to call others to assist in removing and securing them. The Bishop, however, did neither of these things ; he took a more regular course—he sent for a magistrate to preserve the peace—he had, indeed, sent for him before he came himself ; yet, they would have you believe, that he went there for

an illegal purpose—as if any man who intended violence, would send for a magistrate to witness the commission of it. When the magistrate came, Mr. Grindley thought fit to behave a little more decently ; and so far was the Bishop from acting with passion or resentment, that when those about him were desirous of interfering, and offered their services to turn them out, he said to them : “ No ! let the law “ take its course in due season.”—His Lordship, by this answer, showed a greater regard for peace than recollection of the law ; for the course of the law *did* warrant their forcible removal ; instead of which, he left the Prosecutor, with arms in his hands, in a possession, taken originally by force, and forcibly maintained.

Let us next examine if the Prosecutor, and his witnesses, were engaged in A RIOT.—My Learned Friend will forgive me if I remind him, that there is one part of the legal definition of a riot, which he omitted.—I will, therefore, supply the omission from the same authorities.—“ A riot is, where three “ persons, or more, assemble together with an intent, mutually, to assist one another against any “ who shall oppose them in the execution of some “ enterprise of a private nature, and afterwards actually execute the same in a turbulent manner, to “ the terror of the people, whether the act intended “ be legal or illegal.” But the same authorities add very properly—“ It is clearly agreed, that in every “ riot there must be some such circumstances, either

“ of actual force and violence, or of an apparent
“ tending to strike terror into the people, because a
“ riot must always be laid *in terrorem populi*.”—This
most important part of the definition of a riot, which
my Friend prudently omitted, points, directly and
conclusively, upon the conduct of *his own* Client, and
completely excludes *mine*.—The Prosecutor, and his
witnesses, *did* assemble mutually to support one
another, and executed their purpose *with arms in
their hands, and with threats and terror*; which con-
clusively constitutes a riot, whether he was Registrar,
or not, and whatever might be his right of posses-
sion.—The Bishop, on the other hand, though he
might have no right to remove the Prosecutor, nor
any right to possession, could not possibly be a rioter,
for he came *without violence or terror, or the means
of either*, and, if he had employed them, might law-
fully have used them against those who were em-
ploying both.

Let us now further examine, whether I was right
in maintaining, that there was an aggravation, from
the *place* where the offence was committed, and
which invested the Bishop with a distinct character
and authority.

By the statute of Edward the Sixth, if persons
come tumultuously within the consecrated precincts
of the church, the Ordinary has not only a right to
repress them, but he may excommunicate the offen-
ders; who are, besides, liable to a severe and igno-
minious temporal punishment, after a conviction on

indictment, even for an indecent brawling within the precincts of the church, without any act at all, which would amount to a riot or an affray.

Let us then, for a moment, reflect, how these solemn authorities, and any possible offence in the Reverend Prelate, can possibly be reconciled; and let us contemplate, also, the condition of England, if it be established as a precedent upon the fact before you, that he is amenable to criminal jurisdiction upon this record.—A riot may arise in the street, the moment after your verdict is pronounced, by persons determined to take and to maintain some possession by force. I may see or hear armed men threatening death to all who shall oppose them; yet I should not venture to interpose to restore the peace, because I cannot try their titles, nor examine to which of the contending parties the matter in controversy may belong.—If this new doctrine is to be established, ask yourselves this question—Who will in future interfere to maintain that tranquillity, which the magistrate may come too late to preserve, if the rein is given to disorder in the beginning? Although dangerous violence may be committing, though public order may be trampled down within his view, a wise man will keep hereafter within the walls of his own house. Though fearless of danger to his *person*, he may yet justly fear for his *reputation*, since, if he only asks what is the matter, and interposes his authority or counsel, he may be put by the rioters, into an attitude of defiance, and may be subjected to

the expense and degradation of a prosecution ! The delicate situation of the Bishop, at this moment criminally accused before you, is admitted ; but it is hardly more, Gentlemen, than would attach upon persons of many other descriptions.—The same situation would not be much less distressing to a Judge, to a Member of Parliament, or to any of you, Gentlemen, whom I am addressing.—What would be the condition of the Public, or your own, if you might be thus dragged to the Assizes as rioters, by the very rioters which your duty had driven you to offend ? I assert, that society could not exist for an hour, if its laws were thus calculated to encourage its destroyers, and to punish its protectors.

Gentlemen, there is no man loves freedom better than I do ; there is no man, I hope, who would more strenuously oppose himself to proud and intolerant domination in men of authority, whether proceeding from ministers of the church, or magistrates of the state.—There is no man, who would feel less disposed to step beyond my absolutely imposed duty as an advocate, to support oppression, or to argue away the privileges of an Englishman.—I admit, that an Englishman's house is his castle ; and I recollect and recognise all the liberties he ought to enjoy.—My Friend, and I, are not likely to differ, as to what an Englishman's freedom consists in. The freedom that he and I love and contend for, is THE SAME. It is a freedom that grows out of, and

stands firm upon, **THE LAW**—it is a freedom, which rests upon the ancient institutions of our wise forefathers—it is a freedom which is not only consistent with, but which cannot exist without, public order and peace—and, above all, it is a freedom, cemented by morals, and still more exalted by a reverence for religion, which is the parent of that charity, humanity, and mild character, which has formed, for ages, the glory of this country.

Gentlemen, my Learned Friend takes notice, that this cause has been removed from its primitive tribunal, in order to be tried before you at Shrewsbury. He tells you, he never saw the affidavit that was the foundation of its removal; which, however, he with great propriety supposes contained matter which made it appear to Lord Kenyon to be his duty to withdraw the trial from its proper forum in Wales.—But, he is instructed by Mr. Grindley to deny that any thing was done, either by himself, or any other person connected with him, to prejudice that tribunal, or the country which was to supply it.—I, on the other hand, assert, that, upon the Prosecutor's *own evidence*, greater injustice and malice never marked any judicial proceeding. I have in my hand a book (no matter by whom written) circulated industriously through all Wales, to prejudice the public mind upon the very question before you. But Mr. Grindley, it seems, is not responsible for the acts of this anonymous libeller.—How far he is responsible, it is for you to judge. It is for you to

settle, how it happened that the author of this book should have it in his power, minutely to narrate every circumstance which Mr. Grindley has himself been swearing to ; and that he should happen, besides, to paint them in the very *same* colours, and to swell them with the *same* exaggerations, with which they have been this morning accompanied.—It will be for *you* to calculate the *chances* that should bring into the same book, under inverted commas, a long correspondence between the Bishop of Bangor and this very person.—Gentlemen, he admits, upon his oath, “ that he furnished the materials from “ whence that part of the work, at least, might “ have reached the author ;” and from thence it will be for you to guess, what share he had in the remainder.—All I know is, that from that time forward the Bishop’s character has been torn to pieces, not from this pamphlet alone, but by a pestilential blast of libels, following one another ; so that it has been impossible to read a newspaper, without having announced to us this miserable cause, and the inquiries forsooth to be instituted in Parliament, which were to follow the decision.—Gentlemen, the same spirit pursues the cause even into *THIS PLACE*,—proceeding from the same tainted source.—My Friend tempers his discourse with that decorum and respect for religion, which is inseparable from the lips of so good a man.—He tells you, that it has been wittily said of the clergy, and his Client desires him to add, “ truly too”—that the clergy have found what Ar-

chimedès wished for in vain—"a fulcrum, from whence to move the world;" he tells you, "that it is recorded of that great philosopher, that he desired but to have a fulcrum for his engine, to enable him to accomplish it."—"Churchmen," says Mr. Grindley, by the mouth of Mr. Adam, who cannot abandon him, and who, as a sort of set-off against *his own* honour and moderation, is obliged to inhale the spirit of his Client, "The church," says Mr. Grindley, "has found this fulcrum in the other world, and it is by playing off *that* world, they enthrall the world we live in." He admits, indeed, that when they employ their authority to enforce the true purposes of religion, they have a right to that awful fulcrum upon which their engine is placed, and then their office will inspire reverence and submission; but when they make use of it for the lowest and most violent purposes, for ends destructive alike to religion and civil society (*of course the purposes in question*), THEN it seems it is, that disgrace not only falls upon its individuals, but destruction overtakes the order.

My Learned Friend, by his Client's instruction, then immediately applies this general reflection, and says, "that he can discover no other reason, why the Bishop would no longer permit Mr. Grindley to hold the office, than that he had deviated from his celestial course—had looked to the vile and sordid affairs of the world, and prostituted the sacred dignity of his character to purposes which

“ would degrade men in the lowest situations.”—My Friend said, across the Court, that he had never seen the pamphlet. Good God ! I believe it.—But *I* have seen it ; and I have no doubt that one half of it is copied into his brief : it is written in this very spirit—it brings before the Bishop the events of France—it warns him of the fate of his brethren in that country, as an awful lesson to ecclesiastics of all ranks and denominations, and *reminds* him, that 18 archbishops, 118 bishops, 11,850 canons, 3000 superiors of convents, and a revenue of fifteen millions sterling, were on a sudden swept away. [*Mr. Erskine here read an extract from the pamphlet, and then continued :*]

Gentlemen, all this is mighty well ; but he must be but little acquainted with the calamities of France, who believes that this was the source of them.—It was from *no such causes* that those horrors and calamities arose, which have disfigured and dishonoured her revolution, and which have clouded and obscured the otherwise majestic course of freedom ;—horrors and calamities which have inspired an alarm into many good men, and furnished a pretext for many wicked ones, in our own country. It was the profligacy and corruption of the French state, and not the immorality of her clergy, which produced that sudden and extraordinary crisis, in the vortex of which the church, and almost religion itself, were swallowed up. The clergy of France was pulled down *in the very manner of this pamphlet*.—A trum-

pet was blown against their order—the Massacre of St. Bartholomew was acted upon the stage, and the Cardinal of Lorraine introduced upon it, exciting to murder, in the robes of his sacred order.—It was asked, by a most eloquent writer * (with whom I do not agree in many things, as I do in this), whether this horrid spectacle was introduced to inspire the French people with a just horror of blood and persecution?—and he answers the question himself by saying, that it was to excite the indignation of the French nation against RELIGION AND ITS OFFICES; and that it had its effect: “That, by such
 “ means, the Archbishop of Paris, a man only known
 “ to his flock by his prayers and benedictions, and
 “ the extent of whose vast revenues could be best
 “ ascertained by his unexampled charity to the un-
 “ happy, was to be hunted down like a wild beast,
 “ merely because the Cardinal of Lorraine, in the
 “ sixteenth century, had been a rebel and a mur-
 “ derer.”

In the same manner, this pamphlet, through the medium of abuse upon *the Bishop of Bangor*, is obviously calculated to abuse the minds of the lower orders of the people against the CHURCH; and to destroy the best consolation of human life, by bringing the sanctions of religion into doubt and disrepute. I am, myself, no member of the church of England, nor do I know that my Friend is—we were both

* Mr. Burke.

born in another part of the island, and educated in other forms of worship; but we respect the offices of religion, in whatever hands they are placed by the laws of our country: and certainly the English clergy never stood higher than they do to-day, when Mr. Adam, so thoroughly acquainted with the history of his country, as far as it is ancient, and who, from his personal and professional connexions, is so perfectly acquainted with all that passes in the world of our own day, is drawn back to the times of Laud and Wolsey, to search for English prelates, who have been a reproach to the order; and when he would represent tyranny and oppression in churchmen, is forced back upon an unreformed church, and to ages of darkness and superstition, because it would have been in vain to look for them under the shadow of that mild religion which has promoted such a spirit of humanity, and stamped such a character upon our country, that if it should ever please God to permit her to be agitated like neighbouring nations, the happy difference would be seen between men who reverence religion, and those who set out with destroying it.—The BISHOPS, besides (to do them common justice), are certainly the *last* of the clergy that should be attacked.—The indulgent spirit of reformed Christianity, recollecting that, though invested with a divine office, they are men with human passions and affections, permits them to mix in all the customary indulgences, which, without corrupting our morals, constitute much of the comfort

and happiness of our lives ; yet, they in a manner separate themselves from their own families ; and, whilst the other orders of the clergy, even the most dignified, enjoy (without being condemned for it) the amusements which taste and refinement spread before us, no Bishop is found within these haunts of dissipation.—So far from subjecting themselves to be brought to the assizes for riot and disorder, they thus *refuse many of the harmless gratifications*, which, perhaps, rather give a grace and ornament to virtue, than disfigure the character of a Christian ; and I am sure, the Reverend Prelate, whom I represent, has never overstepped those limits, which a decorum, perhaps overstrained, has by custom imposed upon the whole order. The Bishop's individual character, like every other man's, must be gathered from his life, which, I have always understood, has been eminently useful and virtuous. I know he is connected with those, whose lives are both ; and who must be suffering distress at this moment from these proceedings. He is nearly allied to one*, whose extraordinary knowledge enables him to fulfil the duties of a warm benevolence, in restoring health to the sick, and in bringing back hope and consolation along with it, to families in the bitterness of affliction and distress.—I have, more than once, received that blessing at his hands, which has added not a little, to the anxiety which I now feel.

* The celebrated Dr. Richard Warren.

Gentlemen, I am instructed, and indeed pressed, by the anxiety of the Bishop's friends, to call many witnesses, to show, that he was by no means disturbed with passion, as has been represented, and that, so far from it, he even repressed those, whose zeal for order, and whose affection for his person, prompted them to interfere; saying to them, "The law will interpose in due season." I have witnesses, to a great number, whom I am pressed to call before you, who would contradict Mr. Grindley in the most material parts of his testimony; but then I feel the advantage he would derive from this unnecessary course; he would have an opportunity, from it, to deprive the Reverend Prelate of the testimony and protection of your approbation. He would say, no doubt, "Oh, I made out the case which vindicated my Prosecution, though it was afterwards overturned by the testimony of persons in the Bishop's suite, and implicitly devoted to his service;—I laid facts before the Jury, from which a conviction must have followed, and I am not responsible for the false glosses by which *his witnesses have perverted them.*"—This would be the language of the Prosecutor; and I am, therefore, extremely anxious that your verdict should proceed *upon the facts as they now stand before the Court*, and that you should repel, with indignation, a charge which is defeated by the very evidence that has been given to support it.—I cannot, besides, endure the humiliation of fighting with a shadow, and the im-

prudence of giving importance, to what I hold to be *nothing*, by putting *any thing* in the scale against it ; a conduct, which would amount to a confession that *something* had been proved which demanded an answer. How far those, from whom my instructions come, may think me warranted in pursuing this course, I do not know ; but the decision of that question will not rest with either of us, if your good sense and consciences should, as I am persuaded they will, give an immediate and seasonable sanction to this conclusion of the trial.

Mr. ERSKINE, after consulting a few minutes with Mr. Plumer, Mr. Leycester, and Mr. Milles, informed the Court he should give no Evidence.

Mr. Justice HEATH then summed up as follows ; which we insert, as the Learned Judge stated the substance of all the Evidence given on the Trial.

MR. JUSTICE HEATH.

GENTLEMEN OF THE JURY,

THIS is an Indictment against the Bishop of Bangor, Hugh Owen, John Roberts, John Williams, and Thomas Jones. The Indictment states, " That Samuel Grindley (who, it seems, is

“ the Prosecutor of this Indictment), on the 8th of
 “ January last, was Deputy Registrar of the Epis-
 “ copal and Consistorial Court of the Bishop of
 “ Bangor, and that, in right of his office, he had
 “ the use of a room adjoining to the cathedral
 “ church of Bangor, called the Registrar’s Office,
 “ for transacting the business of his office : that the
 “ Defendants, intending to disturb the Prosecutor
 “ in the execution of his office of Deputy Registrar,
 “ on the 8th of January last, riotously assembled and
 “ unlawfully broke the Registrar’s Office, and re-
 “ mained there for an hour, and continued making
 “ a great disturbance, and assaulted the Prosecutor,
 “ and stirred up a riot.”

This, Gentlemen, is the substance of the Indictment.—The definition of a riot has been truly stated to you ; it may be collected, indeed, from the Indictment itself ; and is, when two or more persons assemble together with an intent mutually to assist each other, and to resist all those who should oppose them, and with a further intent to break the peace ; —and it is likewise for a private purpose.

Now, before I sum up the evidence, I shall state those things particularly, to which you should direct your attention ; and you will consider how the evidence applies in support of the Indictment. It must be proved, to your satisfaction, that the Prosecutor is Deputy Registrar of this Consistorial Court of the Bishop of Bangor ; that, in right of that office, he had the use of this room to transact his business

there ; that the Defendants, intending to disturb him in his office, riotously assembled to disturb the peace, and broke and entered the office-room, and continued there, making a great disturbance, asserting that he had assumed an office which did not belong to him, and making a riot there. These things must be proved to your satisfaction.—I will comment upon the evidence as I shall state it to you.

Samuel Grindley, the Prosecutor, tells you, that in February 1792, he was appointed Agent to the Bishop of Bangor, and that he afterwards held the office of Deputy Registrar, under Mr. Gunning, who, it seems, was a minor ; that he saw Mr. Gunning, the Registrar, in October 1794 ; that he paid seventy pounds a year to the Bishop, on account of Mr. Gunning his principal ; that the Bishop was the person who made the bargain between him and his principal ; that he entered on his office as Deputy.—He says, that he was invited by the Bishop, and that the Bishop introduced him (the Prosecutor) to Mr. Gunning, as the Principal Registrar, and introduced the Principal Registrar to the witness as his Deputy.—He says, that there was no complaint that he had not discharged the duties of his office ; and that he continued to discharge the duties of his office till the 22d of February last. He says, that there is an apartment belonging to this office, which, it seems, is under the chapter-house adjoining to the cathedral ; that there is a flight of steps going

up to it—that he employs his Clerks in the office, and he has a resident Clerk there.—He says, he told the Bishop that he would resign on the 22d of February last; that on the 4th of January he was absent from Bangor, and returned on the 7th, having received information that his office had been broken open; that the Bishop afterwards acknowledged to him, that it had been broken open by his (the Bishop's) servants, under his direction.—He says, that some panes of glass had been taken down, the leads had been removed, and fresh locks had been put upon the doors. All this the Bishop acknowledged.—And then he gives you an account of his coming there; of his breaking open the door, and his entering again.

Let us consider, so far as this, how it applies. In the first place, it certainly does not lie in the mouth of the Bishop to say, that this man was not properly appointed to his office; he was in the exercise of his office; he had made an agreement with his principal, and he paid him seventy pounds a year—the Bishop was the person who negotiated the business; and he gave the Bishop notice that he meant to give up his office on the 22d of February; but you see, between the 4th and the 7th of January, before the time the Prosecutor had appointed for resigning his office, the Bishop thought proper to go to the office and break open the lock, and then, it is contended on the part of the Defendants, that the Bishop was in peaceable possession; it is con-

tended too, that, as Bishop, he had a jurisdiction in this cathedral—that, because the Deputy Registrar must be confirmed by the Bishop, the Prosecutor is only tenant at will to the Bishop; that he never had a legal appointment, and, therefore, the Bishop had a power of dismissing him.

Now, in the first place, supposing it to be proved, that the Bishop had a power of dismissing him (which does not appear one way or the other), it does not follow from thence, that he ought to do it by force or violence—he ought to do it by process of law. It happens in this country, that the Lord Chief Justices of the Courts of King's Bench and Common Pleas have a right of appointing officers;—the Judges attending the Court at the Old Bailey, have a right of appointing the officers there;—and questions have frequently arisen concerning this power of appointment, whether rightfully or wrongfully exercised.—What is the mode of deciding it? Each party appoints his officer, and then one brings his action, and it is determined by due course of law.—If the Bishop had a right of dispossessing this man, which does not appear to me, because, though the appointment of a Deputy might not be good without the approbation of the Bishop, it does not follow from thence, that the Bishop had a right to withdraw that approbation and that confirmation, after it was given. Whether he can, or cannot, is a question I am not prepared to decide, and it is immaterial to the present question; it is enough to say, that if the

Bishop had that right and that power, it behoved him to have caused Mr. Gunning to have appointed another Deputy, and then that Deputy ought to have tried the right.—The question then is, was the Bishop in peaceable possession? *No man is in peaceable possession of any place which he comes to by force and violence*; the Bishop exercised force and violence in *this* respect, in breaking the lock, and in putting on a new lock; therefore, the force and violence was on the part of the Bishop;—he was never in peaceable possession of this place, nor could he have a right to come and put this lock upon the door.

Let us pursue this matter by steps.—The Prosecutor said, he came armed with pistols; that was, I think, improper; he ought not to have armed himself with pistols in that fashion.—He broke open the lock, and he entered; *that* was not improper; he being in possession of this office, it was lawful for him to do so.—Then, it seems, a Mr. Rasbrook came, who is a person exercising some office under the Bishop, his house-steward, I think; he came, and the Prosecutor presented a pistol to him—that was highly improper. A man has a right to arm himself, and to assemble his friends in defence of his house; but the law allows no *more*; because the house is his sanctuary, he is not to arm himself, and assemble his friends in defence of his close; but ought to have recourse to legal means, if he is injured; and, therefore, the Prosecutor certainly acted

with a greater degree of force and violence, in that respect, than he ought to have done. But then that was no legal excuse for the Bishop's coming afterwards in the manner he did. The Prosecutor's presenting a pistol to Rasbrook, could be no inducement to the Bishop, and the other Defendants, because they were not present, and their passions were not provoked by it.

The Bishop, in this case, Gentlemen, seems to have laboured certainly under two very great errors.—First of all, that he had a right to remove the Prosecutor; and, secondly, that he had a right to remove him by *force and violence*.—Then these persons were removed out of the office; the outer door was secured, by some means, by the Prosecutor, and the several persons with him.—It is said that they were guilty of a riot.—I think, certainly, they were guilty of no riot *at this time*; they were guilty of a misdemeanor in arming themselves, but they stood merely upon the defensive.—No person, as I told you before, is justified in arming himself and his servants to defend his close; but if he does arm himself and his servants to defend his close, and opposes no person without the close, then he is guilty of no riot whatever.

The question is, whether or no they are guilty of such a breach of the peace—of an act of so much force and violence, as to constitute a riot.—When there was a knocking at the door, the Prosecutor said he would shoot any one who should enter;

which, I said before, he was not warranted in doing. Being told the Bishop was there, he said he would treat him with all possible respect, and he opened the door, and admitted him and his followers; and then, he says, he loaded another pistol.—He tells you, the Bishop entered in a great rage. Whether there was any rage or passion, or no, is only material to show whether or no the rest of the story is probable; because, his being in a rage, does not prove him guilty of a breach of the peace. The question is, whether he has committed any acts in breach of the peace?—First of all, the Prosecutor tells you, that he told the Bishop he should behave with proper respect to him, but he should not leave the office—he swears that the Bishop took hold of him; and afterwards he went to William Roberts, an husbandman belonging to the witness—he then went to another servant, Robert Davis, and attempted to pull him out; that the Bishop returned to William Roberts, collared him, and drew him towards the door; that the Bishop went with his hands clenched towards the witness; and the witness describes the manner in which he (the Bishop) went towards him.—Now his taking hold of the witness is AN ASSAULT.—He says, he attempted to pull him out; his seizing hold of him is AN ASSAULT; his returning to William Roberts, and collaring him, and pushing him towards the door, is ANOTHER ASSAULT; his going with his hands clenched towards him in a menacing way, if he were near enough to strike him, would be

an assault; if not near enough to strike him, it would not be an assault; and then he called to his servants to come and pull him out—that is a breach of the peace, coming and removing them all by force and violence.

Then there is that which passes in respect to Mr. Roberts.—The Prosecutor and the other witnesses tell you, that Roberts was in a great rage; he cannot say whether he entered before or after the orders given by the Bishop; that he clenched his fist, and said, “If nobody will turn him (meaning the Prosecutor) out, I will do it.”—The Bishop said, the Prosecutor had pistols; upon which Roberts said, in an outrageous manner, “Do not shoot the Bishop, shoot me;” and said, that if nobody else would turn the Prosecutor out, he would.—He asked the Prosecutor to go on one side with him, into the churchyard, and said, he was not afraid of him in any place. The witness said, he had something else to attend to; and another of the witnesses said, he promised to meet him at some other time and place. This is, you see, a challenge by Roberts to fight the Prosecutor; why, that is a breach of the peace. The Bishop is present; he is the person who tells Roberts that the Prosecutor had pistols; then the Bishop hears this challenge. They all came upon one design. When several persons come upon an illegal design or purpose, the act of one, especially if in the presence of all, is the act of all.

This, Gentlemen, is the sum of the evidence

on the *one side* ; and there is *no* evidence on the *other*.

The Bishop, no doubt, is a man of an excellent character ; but at this moment he gave way to his temper. He ought to have followed the process of the law, and not so to have done. Thus much I have said affects the Bishop, and affects Roberts. As to Owen, the Prosecutor says that Owen came into the office ; he made a noise ; he talked very loud. The witness told him, if he had any business, he was there ready to transact it, otherwise he begged they would go about their business. He only speaks to his making a noise. John Williams, he says, was less noisy than the rest. The witness asked what business he had there ; and told him to go about his business. He says, he staid there against his will ; he staid after the rest went away.

Upon this it is necessary for me to state, as I did before, that the other Defendants coming with the Bishop upon the same design, by force and violence, to dispossess the Prosecutor, undoubtedly they came with an unlawful intent and purpose ; *and, if you believe these witnesses*, they were guilty of the several breaches of the peace which I have stated, in assaulting the Prosecutor, in assaulting David Roberts, in assaulting William Roberts, and in the Defendant Roberts challenging the Prosecutor ; if you believe these witnesses, it seems to me that the Defendants are guilty of the riot with which they stand charged. As for the force and violence which the

Prosecutor made use of, all that may be urged in another place in mitigation of the punishment ; it is only for you to determine whether they, or each of them, are guilty of this riot.

Mr. Erskine.—The two last witnesses stated a direct contradiction.

Mr. Justice Heath.—The law is clear and plain ; you will apply the law to the facts as I have stated them. You will banish all prejudices that you may have from all publication. It is, indeed, unnecessary to admonish Gentlemen of your enlightened understandings ; but at the same time, considering that individuals are to be tried by the law of the land, if they are guilty, notwithstanding the high character they may deservedly have, down to this time, it is your duty to find them guilty. *If you have any reasonable doubt whether they are guilty;—in that case you will acquit the Defendants.*

In about five minutes the Jury acquitted all the Defendants.

S P E E C H
FOR THE
REV. GEORGE MARKHAM

AGAINST
JOHN FAWCETT, ESQ.

FOR
CRIMINAL CONVERSATION WITH THE PLAINTIFF'S WIFE,
Before the DEPUTY SHERIFF of MIDDLESEX,
and a SPECIAL JURY,
UPON AN INQUISITION OF DAMAGES.

PREFACE.

NONE of the pleadings of Lord Erskine when at the Bar, excited a greater interest, or were attended with greater success, than those (and they were most numerous) in cases of Adultery. His assistance was so generally sought after, that, except in a very few instances, he was always secured by the retainers of complainants—so that, with the exception of the case of Howard against Bingham, now Earl of Lucan, in the present volume, the case of Eston against the late Duke of Hamilton, where the phrase of the “Loose Fish” made so conspicuous an appearance—and a cause of Baldwin and Oliver, in which he attended at York Assizes, and where the Jury found a shilling damages, we do not recollect any of his

Speeches for adulterers in mitigation of damages. It was, perhaps, in consequence of that circumstance, that it became the fashion to attribute to the period when Lord Kenyon was Chief Justice of the King's Bench, and Lord Erskine was at the Bar in that Court, a greater number of verdicts in cases of adultery, with severe damages, than could be altogether vindicated, either by precedent or by the mild spirit of our judicial proceedings; but, after the best attention we have been able to give to the subject, in considering of a fit preface for the only two correct Speeches which we are at present possessed of on that subject, the observation appears to be without due foundation.

Adultery, when attended with all the circumstances of aggravation which mark the following case of the Rev. Mr. Markham (and there were many others in Lord Erskine's time of a similar description), is unquestionably the greatest civil injury which man can commit against man; and the manner in which the subject is treated in the Speech which follows, deserves the serious attention of every person who is not lost to all consideration of human comfort and happiness. With regard to the facts, no preface is necessary.—They are all detailed in Mr. Erskine's Speech for the Plaintiff; and no evidence was offered on the Defendant's part, who had let judgment go by default. The Inquisition was taken upon the 4th of May 1802, before the Sheriff of Middlesex and a Special Jury, at the King's Arms Tavern, in Palace Yard, Westminster, at six in the

evening, after the business of the Courts at Westminster had finished.

The Jury found a verdict with seven thousand pounds damages, which we have been informed were never levied, the Defendant having left the kingdom.

MR. ERSKINE'S SPEECH FOR THE PLAINTIFF.

MR. Sheriff, and Gentlemen of the Jury—In representing the unfortunate Gentleman who has sustained the injury which has been stated to you by my Learned Friend, Mr. Holroyd, who opened the pleadings, I feel one great satisfaction—a satisfaction founded, as I conceive, on a sentiment perfectly constitutional.—I am about to address myself to men whom I PERSONALLY KNOW;—to men, honourable in their lives,—moral,—judicious; and capable of correctly estimating the injuries they are called upon to condemn in their character of Jurors. THIS, Gentlemen, is the only country in the world, where there is such a tribunal as the one before which I am now to speak: for, however in other countries such institutions as our own may have been set up of late, it is only by that maturity which it requires ages to give to governments—by that progressive wisdom which has slowly ripened the Constitution of our country, that it is possible

there can exist such a body of men as you are. It is the great privilege of the subjects of England that they judge one another.—It is to be recollected, that, although we are in this private room, all the sanctions of justice are present.—It makes no manner of difference, whether I address you in the presence of the Under-sheriff, your respectable Chairman, or with the assistance of the highest magistrate of the state.

The Defendant has, on this occasion, suffered judgment by default :—*other* adulterers have done so before him. Some have done so under the idea, that, by suffering judgment against them, they had retired from the public eye—from the awful presence of the Judge; and that they came into a corner, where there was not such an assembly of persons to witness their misconduct, and where it was to be canvassed before persons, who might be less qualified to judge the case to be addressed to them.

It is not long, however, since such persons have had an opportunity of judging how much they were mistaken in this respect: the largest damages, in cases of adultery, have been given in this place.—By this place, I do not mean the particular room in which we are now assembled, but under inquisitions directed to the Sheriff; and the instances to which I allude, are of modern, and, indeed, recent date.

Gentlemen, after all the experience I have had, I feel myself, I confess, considerably embarrassed in

what manner to address you. There are some subjects that harass and overwhelm the mind of man.—There are some kinds of distresses one knows not how to deal with.—It is impossible to contemplate the situation of the Plaintiff without being disqualified, in some degree, to represent it to others with effect.—It is no less impossible for you, Gentlemen, to receive on a sudden the impressions which have been long in *my* mind, without feeling overpowered with sensations, which, after all, had better be absent, when men are called upon, in the exercise of duty, to pronounce a legal judgment.

The Plaintiff is the third son of His Grace the Archbishop of York, a clergyman of the Church of England; presented in the year 1791, to the living of Stokeley, in Yorkshire; and now, by His Majesty's favour, Dean of the Cathedral of York.—He married in the year 1789, Miss Sutton, the daughter of Sir Richard Sutton, Bart. of Norwood, in Yorkshire, a lady of great beauty and accomplishments, most virtuously educated, and who, but for the crime of the Defendant which assembles you here, would, as she has expressed it herself, have been the happiest of womankind. This gentleman having been presented in 1791, by his father, to this living, where I understand there had been no resident Rector for forty years, set an example to the Church and to the Public, which was peculiarly virtuous in a man circumstanced as he was; for, if there can be any person more likely than another to

protect himself securely with privileges and indulgences, it might be supposed to be the sort of the metropolitan of the province. This gentleman, however, did not avail himself of the advantage of his birth and station: for, although he was a very young man, he devoted himself entirely to the sacred duties of his profession;—at a large expense he repaired the Rectory-house for the reception of his family, as if it had been his own patrimony, whilst, in his extensive improvements, he adopted only those arrangements which were calculated to lay the foundation of an innocent and peaceful life.—He had married this lady, and entertained no other thought than that of cheerfully devoting himself to all the duties, public and private, which his situation called upon him to perform.

About this time, or soon afterwards, the Defendant became the purchaser of an estate in the neighbourhood of Stokeley, and, by such purchase, an inhabitant of that part of the country, and the neighbour of this unfortunate gentleman.—It is a most affecting circumstance, that the Plaintiff and the Defendant had been bred together at Westminster School; and in my mind it is still more affecting, when I reflect what it is which has given to that school so much rank, respect, and illustration.—It has derived its highest advantages from the reverend father of the unfortunate gentleman whom I represent.—It was the School of Westminster which gave birth to that learning which afterwards presided over

it, and advanced its character.—However some men may be disposed to speak or write concerning public schools, I take upon me to say, they are among the wisest of our institutions ;—whoever looks at the national character of the English people, and compares it with that of all the other nations upon the earth, will be driven to impute it to that reciprocation of ideas and sentiments which fill and fructify the mind in the early period of youth, and to the affectionate sympathies and friendships which rise up in the human heart before it is deadened or perverted by the interests and corruptions of the world. These youthful attachments are proverbial, and, indeed, few instances have occurred of any breaches of them ; because a man, before he can depart from the obligations they impose, must have forsaken every principle of virtue, and every sentiment of manly honour. When, therefore, the Plaintiff found his old schoolfellow and companion settled in his neighbourhood, he immediately considered him as his brother.—Indeed, he might well consider him as a brother, since, after having been at Westminster, they were *again* thrown together in the same college at Oxford ; so that the friendship they had formed in their youth, became cemented and consolidated upon their first entrance into the world.—It is no wonder, therefore, that when the Defendant came down to settle in the neighbourhood of the Plaintiff, he should be attracted towards him by the impulse of his former attachment : he recom-

mended him to the Lord Lieutenant of the County, and, being himself a magistrate, he procured him a share in the magistracy.—He introduced him to the respectable circle of his acquaintances: he invited him to his house, and cherished him there as a friend. It is *this* which renders the business of to-day most affecting, as it regards the Plaintiff, and wicked in the extreme, as it relates to the Defendant, because the confidences of friendship conferred the opportunities of seduction.—The Plaintiff had no pleasures or affections beyond the sphere of his domestic life; and except on his occasional residences at York, which were but for short periods, and at a very inconsiderable distance from his home, he constantly reposed in the bosom of his family. I believe it will be impossible for my Learned Friend to invade his character; on the contrary, he will be found to have been a pattern of conjugal and parental affection.

Mr. Fawcett being thus settled in the neighbourhood, and thus received by Mr. Markham as his friend and companion, it is needless to say he could harbour no suspicion that the Defendant was meditating the seduction of his wife:—there was nothing, indeed, in his conduct, or in the conduct of the unfortunate lady, that could administer any cause of jealousy to the most guarded or suspicious temper. Yet, dreadful to relate, and it is, indeed, the bitterest evil of which the Plaintiff has to complain, a criminal intercourse for nearly five years before the

discovery of the connexion had most probably taken place.

I will leave you to consider what must have been the feelings of such a husband, upon the fatal discovery that his wife, and such a wife, had conducted herself in a manner that not merely deprived him of her comfort and society, but placed him in a situation too horrible to be described. If a man without children is suddenly cut off by an adulterer from all the comforts and happiness of marriage, the discovery of *his* condition is happiness itself when compared with that to which the Plaintiff is reduced. When children, by a woman, lost for ever to the husband, by the arts of the adulterer, are begotten in the unsuspected days of virtue and happiness, there remains a consolation ; mixed indeed, with the most painful reflections, yet a consolation still.—But what is the Plaintiff's situation ?—He does not know at *what time* this heavy calamity fell upon him—he is tortured with the most afflicting of all human sensations.—When he looks at the children, whom he is by law bound to protect and to provide for, and from whose existence he ought to receive the delightful return which the union of instinct and reason has provided for the continuation of the world, he knows not whether he is lavishing his fondness and affection upon his own children, or upon the seed of a villain sown in the bed of his honour and his delight.—He starts back with horror, when, instead of seeing his own image reflected from their infant fea-

tures, he thinks he sees the destroyer of his happiness—a midnight robber introduced into his house, under professions of friendship and brotherhood—a plunderer, not in the repositories of his treasure which may be supplied, or lived without, “*but there where he had garnered up his hopes, where either he must live or bear no life.*”

In this situation, the Plaintiff brings his case before you, and the Defendant attempts no manner of defence: he admits his guilt,—he renders it unnecessary for me to go into any proof of it; and the only question, therefore, that remains, is for you to say what shall be the consequences of his crime, and what verdict you will pronounce against him. You are placed, therefore, in a situation most momentous to the public: you have a duty to discharge, the result of which, not only deeply affects the present generation, but which remotest posterity will contemplate to your honour or dishonour.—On *your* verdict it depends whether persons of the description of the Defendant, who have cast off all respect for religion, who laugh at morality, when it is opposed to the gratification of their passions, and who are careless of the injuries they inflict upon others, shall continue their impious and destructive course with impunity.—On *your* verdict it depends whether such men, looking to the proceedings of Courts of Justice, shall be able to say to themselves, that there are *certain limits* beyond which the damages of Juries are not to pass. On *your* verdict it depends

whether men of large fortunes shall be able to adopt this kind of reasoning to spur them on in the career of their lusts :—*There are many chances that I may not be discovered at all :—there are chances, that, if I am discovered, I may not be the object of legal inquiry,—and supposing I should, there are certain damages, beyond which a Jury cannot go ;—they may be large,—but still within a certain compass ; if I cannot pay them myself, there may be persons belonging to my family who will pity my situation—somehow or other the money may be raised, and I may be delivered from the consequences of my crime.* I TRUST THE VERDICT OF THIS DAY WILL SHOW MEN WHO REASON THUS, THAT THEY ARE MISTAKEN.

The action for adultery, like every other action, is to be considered according to the extent of the injury, which the person complaining to a Court of Justice has received. If he has received an injury, or sustained a loss that can be estimated directly in money, there is then no other medium of redress, but in monies numbered according to the extent of the proof: I apprehend it will not be even stated by the Counsel for the Defendant, that if a person has sustained a loss, and can show it is to any given extent, he is not entitled to the full measure of it in damages. If a man destroys my house or furniture, or deprives me of a chattel, I have a right, *beyond all manner of doubt*, to recover their corresponding values in money ; and it is no answer to me to say, that he who has deprived me of the advantage

I before possessed, is in no situation to render ~~me~~ satisfaction.—A verdict pronounced upon such a principle, in any of the cases I have alluded to, would be set aside by the Court, and a new trial awarded.—It would be a direct breach of the oaths of Jurors, if, impressed with a firm conviction that a Plaintiff had received damages to a given amount, they retired from their duty, because they felt commiseration for a Defendant, even in a case where he might be worthy of compassion from the injury being unpremeditated and inadvertent,

But there are other wrongs which cannot be estimated in money :

“ You cannot minister to a *mind* diseas'd.”

You cannot redress a man who is wronged beyond the possibility of redress :—the law has no means of restoring to him what he has lost.—God himself, as he has constituted human nature, has no means of alleviating such an injury as the one I have brought before you.—While the sensibilities, affections, and feelings he has given to man remain, it is impossible to heal a wound which strikes so deep into the soul.—When you have given to a Plaintiff, in damages, all that figures can number, it is as nothing ;—he goes away hanging down his head in sorrow, accompanied by his wretched family, dispirited and dejected. Nevertheless, the law has given a civil action for adultery, and, strange to say, it has given *nothing else*.—The law commands that the injury shall

be compensated (as far as it is practicable) IN MONEY, because Courts of *Civil* Justice have no other means of compensation THAN *money*; and the only question, therefore, and which *you* upon your oaths are to decide, is this: has the Plaintiff sustained an injury up to the extent which he has complained of? Will twenty thousand pounds place him in the same condition of comfort and happiness that he enjoyed before the adultery, and which the adulterer has deprived him of? You know that it will not.—Ask your own hearts the question, and you will receive the same answer.—I should be glad to know, then, upon what principle, as it regards the *private* justice, which the Plaintiff has a right to, or upon what principle, as the example of that justice affects the public and the remotest generations of mankind, you can reduce this demand even in a single farthing.

This is a doctrine which has been frequently countenanced by the Noble and Learned Lord who lately presided in the Court of King's Bench *; but his Lordship's reasoning on the subject has been much misunderstood, and frequently misrepresented.—The Noble Lord is supposed to have said, that although a Plaintiff may not have sustained an injury by adultery to a given amount, yet that large damages, for the sake of public example, should be given.—He never said any such thing.—He said

* Lord Kenyon.

that which law and morals dictated to him, and which will support his reputation as long as law and morals have a footing in the world.—He said that every Plaintiff had a right to recover damages *up to the extent of the injury he had received*, and that public example stood in the way of showing *favour* to an adulterer, by reducing the damages below the sum, which the Jury would otherwise consider as the lowest compensation for the wrong. If the Plaintiff shows you that he was a most affectionate husband; that his parental and conjugal affections were the solace of his life; that for nothing the world could bestow in the shape of riches or honours, would he have bartered one moment's comfort in the bosom of his family, he shows you a wrong *that no money can compensate*;—nevertheless, if the injury is only measurable in money, and if you are sworn to make upon your oaths a pecuniary compensation, though I can conceive that the damages when given to the extent of the declaration, and you can give no more, may fall short of what your consciences would have dictated, yet I am utterly at a loss to comprehend upon what principle they can be *lessened*.—But then comes the Defendant's Counsel, and says, “It is true that the injury cannot be compensated by the sum which the Plaintiff has demanded; but you will consider the miseries my Client must suffer, if you make him the object of a severe verdict.—You must, therefore, regard him with compassion; though I am ready to admit

“ the Plaintiff is to be compensated for the injury he
“ has received.”

Here, then, Lord Kenyon’s doctrine deserves consideration.—“ He who will mitigate damages below
“ the fair estimate of the wrong which he has com-
“ mitted, must do it upon some principle which
“ the policy of the law will support.”

Let me then examine whether the Defendant is in a situation which entitles him to have the damages against him *mitigated*, when private justice to the injured party calls upon you to give them **TO THE UTMOST FARTHING**. The question will be—on what principle of mitigation he can stand before you? I had occasion, not a great while ago, to remark to a Jury, that the wholesome institutions of the civilized world came seasonably in aid of the dispensations of Providence for our well-being in the world. If I were to ask, what it is that prevents the prevalence of the crime of incest, by taking away those otherwise natural impulses, from the promiscuous gratification of which we should become like the beasts of the field, and lose all the intellectual endearments which are at once the pride and the happiness of man?—What is it that renders our houses pure, and our families innocent?—It is that, by the wise institutions of all civilized nations, there is placed a kind of guard against the human passions, in that sense of impropriety and dishonour, which the law has raised up, and impressed with almost the force of a second nature.—This wise and politic re-

straint beats down, by the habits of the mind, even a propensity to incestuous commerce, and opposes those inclinations, which nature, for wise purposes, has implanted in our breasts at the approach of the other sex.—It holds the mind in chains against the seductions of beauty.—It is a moral feeling in perpetual opposition to human infirmity.—It is like an angel from heaven placed to guard us against propensities which are evil.—It is *that* warning voice, Gentlemen, which enables you to embrace your daughter, however lovely, without feeling that you are of a different sex.—It is *that* which enables you, in the same manner, to live familiarly with your nearest female relations, without those desires which are natural to man.

Next to the tie of blood (if not, indeed, before it), is the sacred and spontaneous relation of friendship. The man who comes under the roof of a married friend, ought to be under the dominion of the same moral restraint: and, thank God, generally is so, from the operation of the causes which I have described.—Though not insensible to the charms of female beauty, he receives its impressions under a habitual reserve, which honour imposes.—Hope is the parent of desire, and honour tells him he must not hope.—Loose thoughts may arise, but they are rebuked and dissipated—

“ Evil into the mind of God or man

“ May come and go, so unapprov'd, and leave

“ No spot or blame behind.”

Gentlemen, I trouble you with these reflections; that you may be able properly to appreciate the guilt of the Defendant; and to show you, that you are not in a case where large allowances are to be made for the ordinary infirmities of our imperfect natures. When a man does wrong in the heat of *sudden passion*—as, for instance, when, upon receiving an affront, he rushes into immediate violence, even to the deprivation of life, the humanity of the law classes his offence amongst the lower degrees of homicide; it supposes the crime to have been committed before the mind had time to parley with itself.—But is the criminal act of such a person, however disastrous may be the consequence, to be compared with that of the Defendant?—Invited into the house of a friend,—received with the open arms of affection, as if the same parents had given them birth and bred them;—in *THIS* situation, this most monstrous and wicked Defendant deliberately perpetrated his crime; and, shocking to relate, not only continued the appearances of friendship, after he had violated its most sacred obligations, but continued them as a cloak to the barbarous repetitions of his offence—writing letters of regard, whilst, perhaps, he was the father of the last child, whom his injured friend and companion was embracing and cherishing as his own.—What protection can such conduct possibly receive from the humane consideration of the law for sudden and violent passions? A passion for a woman is progressive—it does not, like anger,

gain an uncontroled ascendancy in a moment, nor is a modest matron to be seduced in a day. Such a crime cannot, therefore, be committed under the resistless dominion of *sudden* infirmity; it must be *deliberately, wilfully, and wickedly* committed.—The Defendant could not possibly have incurred the guilt of this adultery, without often passing through his mind (for he had the education and principles of a gentleman) the very topics I have been insisting upon before you for his condemnation.—Instead of being suddenly impelled towards mischief, without leisure for such reflections, he had innumerable difficulties and obstacles to contend with.—He could not but hear in the first refusals of this unhappy lady, every thing to awaken conscience, and even to excite horror.—In the arguments he must have employed to seduce *her* from *her* duty, he could not but recollect, and wilfully trample upon *his own*. He was a year engaged in the pursuit—he resorted repeatedly to his shameful purpose, and advanced to it at such intervals of time and distance, as entitle me to say, that he determined in cold blood to enjoy a future and momentary gratification, at the expense of every principle of honour which is held sacred amongst gentlemen, even where no laws interpose their obligations or restraints.

I call upon you, therefore, Gentlemen of the Jury, to consider well this case, for it is *your* office to keep human life in tone—*your* verdict must decide whether such a case can be indulgently considered,

without tearing asunder the bonds which unite society together.

Gentlemen, I am not preaching a religion which men can scarcely practise.—I am not affecting a severity of morals beyond the standard of those whom I am accustomed to respect, and with whom I associate in common life.—I am not making a stalking-horse of adultery, to excite exaggerated sentiment.—This is not the case of a gentleman meeting a handsome woman in a public street, or in a place of public amusement; where, finding the coast clear for his addresses, without interruption from those who should interrupt, he finds himself engaged (probably the successor of another) in a vain and transitory intrigue.—It is not the case of him who, night after night, falls in with the wife of another to whom he is a stranger, in the boxes of a theatre, or other resorts of pleasure, inviting admirers by indecent dress and deportment, unattended by any thing which bespeaks the affectionate wife and mother of many children.—Such connexions may be of evil example, but I am not here to reform public manners, but to demand private justice.—It is impossible to assimilate the sort of cases I have alluded to, which ever will be occasionally occurring, with this atrocious invasion of household peace; this portentous disregard of every thing held sacred amongst men good or evil. Nothing, indeed, can be more affecting than even to be called upon to state the evidence I must bring before you; I can scarcely

pronounce to you that the victim of the Defendant's lust was the mother of nine children, seven of them females and infants, unconscious of their unhappy condition, deprived of their natural guardian, separated from her for ever, and entering the world with a dark cloud hanging over them.—But it is not in the descending line alone that the happiness of this worthy family is invaded.—It hurts me to call before you the venerable progenitor of both the father and the children, who has risen by extraordinary learning and piety to his eminent rank in the Church, and who, instead of receiving, unmixed and undisturbed, the best consolation of age, in counting up the number of his descendants, carrying down the name and honour of his house to future times, may be forced to turn aside his face from *some of them*, that bring to his remembrance the wrongs which now oppress him, and which it is his duty to forget, because it is his, otherwise impossible, duty to forgive them.

Gentlemen, if I make out this case by evidence (and, if I do not, forget every thing you have heard, and reproach me for having abused your honest feelings), I have established a claim for damages that has no parallel in the annals of fashionable adultery.—It is rather like the entrance of Sin and Death into this lower world.—The undone pair were living like our first parents in Paradise, till this demon saw and envied their happy condition.—Like them, they were in a moment cast down from the pinnacle of human

happiness into the very lowest abyss of sorrow and despair. In one point, indeed, the resemblance does not hold, which, while it aggravates the crime, redoubles the sense of suffering.—It was not from an enemy, but from a friend, that this evil proceeded. I have just had put into my hand, a quotation from the Psalms upon this subject, full of that unaffected simplicity which so strikingly characterizes the sublime and sacred poet :

“ It is not an open enemy that hath done me this dishonour, for then I could have borne it.

“ Neither was it mine adversary that did magnify himself against me ; for then, peradventure, I would have hid myself from him.

“ But it was even *thou* my companion, my guide, mine own familiar friend.”

This is not the language of Counsel, but the inspired language of truth. I ask you solemnly, upon your honours and your oaths, if you would exchange the Plaintiff's former situation for his present, for an hundred times the compensation he requires at your hands. I am addressing myself to affectionate husbands and to the fathers of beloved children.—Suppose I were to say to you, There is twenty thousand pounds for you—embrace your wife for the last time, and the child that leans upon her bosom and smiles upon you—retire from your house, and make way for the adulterer—wander about an object for the hand of scorn to point its slow and moving finger at—think no more of the happiness and tranquil-

lity of your former state—I have destroyed them for ever ; but never mind—don't make yourself uneasy—here is a draft upon my banker, it will be paid at sight—there is no better man in the city.—I can see you think I am mocking you, Gentlemen, and well you may ; but it is the very pith and marrow of this cause. It is impossible to put the argument in mitigation of damages in plain English, without talking such a language, as appears little better than an insult to your understandings, dress it up as you will.

But it may be asked,—if no money can be an adequate or indeed any compensation, why is Mr. Markham a Plaintiff in a CIVIL ACTION? Why does he come here for money?—Thank God, Gentlemen, IT IS NOT MY FAULT. I take honour to myself, that I was one of those who endeavoured to put an end to this species of action, by the adoption of a more salutary course of proceeding.—I take honour to myself, that I was one of those who supported in Parliament, the adoption of a law to pursue such outrages with the terrors of criminal justice. I thought then, and I shall always think, that every act *malum in se* directly injurious to an individual, and most pernicious in its consequences to society, should be considered to be a misdemeanor. Indeed I know of no other definition of the term ; the Legislature, however, thought otherwise, and I bow to its decision ; but the business of this day may produce some changes of opinion on the sub-

ject. I never meant that *every* adultery was to be similarly considered. Undoubtedly there are cases where it is comparatively venial, and Judges would not overlook the distinctions.—I am not a pretender to any extraordinary purity.—My severity is confined to cases in which there can be but one sentiment amongst men of honour, as to the offence, though they may differ in the mode and measure of its correction.

It is this difference of sentiment, Gentlemen, that I am alone afraid of; I fear you may think there is a sort of limitation in verdicts, and that you may look to precedents for the amount of damages, though you can find no precedent for the magnitude of the crime; but you might as well abolish the action altogether, as lay down a principle which limits the consequences of adultery to what it may be convenient for the adulterer to pay. By the adoption of such a principle, or by any mitigation of severity, arising even from an insufficient reprobation of it, you unbar the sanctuary of domestic happiness, and establish a sort of license for debauchery, to be sued out like other licenses, at its price;—a man has only to put money into his pocket, according to his degree and fortune, and he may then debauch the wife or daughter of his best friend, at the expense he chooses to go to.—He has only to say to himself what Iago says to Roderigo in the play—

“Put money in thy purse—go to—put money in thy purse.”

Persons of immense fortunes might, in this way, deprive the best men in the country of their domestic satisfactions, with what to them might be considered as impunity. The most abandoned profligate might say to himself, or to other profligates, " I have suffered judgment by default—let them send down their Deputy Sheriff to the King's-Arms Tavern ; I shall be concealed from the eye of the public—I have drawn upon my banker for the *utmost damages*, and I have as much more to spare to-morrow, if I can find another woman whom I would choose to enjoy at such a price." In this manner I have seen a rich delinquent, too lightly fined by courts of criminal justice, throw down his bank-notes to the officers, and retire with a deportment, not of contrition, but contempt.

For these reasons, Gentlemen, I expect from you to-day the full measure of damages demanded by the Plaintiff. Having given such a verdict, you will retire with a monitor within, confirming that you have done right—you will retire in sight of an approving public, and an approving Heaven. Depend upon it, the world cannot be held together without morals ; nor can morals maintain their station in the human heart without religion, which is the corner-stone of the fabric of human virtue.

We have lately had a most striking proof of this sublime and consoling truth, in *one* result, *at least*, of the revolution which has astonished and shaken the earth. Though a false philosophy was permitted for

a season to raise up her vain fantastic front, and to trample down the Christian establishments and institutions, yet, on a sudden, God said, "Let there be light, "and there was light." The altars of religion were restored; not purged indeed of human errors and superstitions, not reformed in the just sense of reformation, yet the Christian religion is still re-established; leading on to further reformation;—fulfilling the hope, that the doctrines and practice of Christianity shall overspread the face of the earth.

Gentlemen, as to us, we have nothing to wait for;—we have long been in the centre of light—we have a true religion and a free government, AND YOU ARE THE PILLARS AND SUPPORTERS OF BOTH.

I have nothing further to add, except that, since the Defendant committed the injury complained of, he has sold his estate, and is preparing to remove into some other country. Be it so.—Let him *remove*; but you will have to pronounce the penalty of his *return*. It is for you to declare whether such a person is worthy to be a member of our community. But if the feebleness of your jurisdiction, or a commiseration which destroys the exercise of it, shall shelter such a criminal from the consequences of his crimes, individual security is gone, and the rights of the public are unprotected. Whether this be our condition or not, I shall know by your verdict.

S P E E C H

FOR THE

HON. RICHARD BINGHAM,

NOW EARL OF LUCAN.

THE following Speech, like the former, requires no Preface. It was delivered by Mr. Erskine in the Court of King's Bench, on Monday, February 24, 1794, as Counsel for the present Lord Lucan, in an action brought against him by Bernard Edward Howard, Esq: presumptive heir of the Duke of Norfolk, for adultery with his wife. The circumstances, under which the damages were sought to be mitigated, in opposition to the severe principle regarding them, insisted upon in the Speech for Mr. Markham, appear fully in the Speech itself.

The Jury found only Five Hundred Pounds damages.

MR. ERSKINE.

GENTLEMEN of the Jury—My Learned Friend, as Counsel for the Plaintiff, has bespoke an address from me, as Counsel for the Defendant, which you must not, I assure you, expect to hear. He has thought it right (partly in courtesy to me, as I am willing to believe), and in part for the purposes of his cause, that you should suppose you are to be addressed with eloquence which I never possessed, and which if I did, I should be incapable at this moment of exerting; because the most eloquent man, in order to exert his eloquence, must have his mind free from embarrassment on the occasion on which he is to speak:—I am not in that condition. My Learned Friend has expressed himself as the friend of the Plaintiff's family:—He does not regard that family more than I do; and I stand in the same predicament towards my own honourable Client and his relations; I know him and them, and because I know them, I regard them also: my embarrassment, however, only arises at being obliged to discuss this question in a public Court of Justice, because, could it have been the subject of private reference, I should have felt none at all in being called upon to settle it.

Gentlemen, my embarrassment is abundantly increased, when I see present a noble person, high, very high in rank in this kingdom, but not higher

in rank than he is in my estimation :—I speak of the Noble Duke of Norfolk, who most undoubtedly must feel not a little, at being obliged to come here as a witness for the Defendant, in the cause of a Plaintiff so nearly allied to himself: I am persuaded no man can have so little sensibility, as not to feel that a person in my situation, must be greatly embarrassed in discussing a question of this nature before such an audience, and between such parties as I have described.

Gentlemen, my Learned Friend desired you would take care not to suffer argument, or observation, or eloquence, to be called into the field, to detach your attention from the evidence in the Cause, upon which alone you ought to decide: I wish my Learned Friend, at the moment he gave you that caution, had not *himself* given testimony of a fact, to which he stood the solitary witness: I wish he had not introduced *his own evidence*, without the ordinary ceremony of being sworn.—I will not follow his example.—I will not tell you, what I know from the conversation of my Client, nor give evidence of what I know myself :—my Learned Friend tells you, that nothing can exceed the agony of mind his Client has suffered, and that no words can describe his adoration of the lady he has lost: these most material points of the Cause rest, however, altogether on the *single, unsupported, unsworn evidence of the COUNSEL* for the Plaintiff.—No RELATION has been called upon to confirm them, though we

are told, that the whole house of Fauconberg, Belasyse, and Norfolk, are in the avenues of the Court, ready, it seems, to be called at my discretion :—and yet my Learned Friend is himself the only witness ; though the facts (and most material facts indeed, they would have been) might have been proved by so many illustrious persons.

Now, to show you how little disposed I am to work upon you by any thing, but by proof ; to convince you, how little desirous I am to practise the arts of speech as my only artillery in this Cause ; I will begin with a few plain dates, and, as you have pens in your hands, I will thank you to write them down.

I shall begin with stating to you, what my Cause is, and shall then prove it ; not by myself, but by witnesses.

The parties were married on the 24th of April 1789.—The child that has been spoken of, and in terms which gave me great satisfaction, as the admitted son of the Plaintiff, blessed with the affection of his parent, and whom the noble person to whom he may become heir, can look upon without any unpleasant reflection : that child was born on the 12th of August 1791 ; take that date, and my *Learned Friend's admission*, that this child must have been the child of Mr. Howard ; an admission which could not have been rationally or consistently made, but upon the implied admission, that no illicit connexion had *existed previously*, by which its ex-

istence might have been referred to the Defendant. —On this subject, therefore, the Plaintiff must be silent ;—he cannot say the parental mind has been wrung :—he cannot say hereafter, “ NO SON OF “ MINE SUCCEEDING ;” he can say none of these things.—This child was born on the 12th of August 1791, and, as Mr. Howard is *admitted* to be the author of its existence (which he must have been, if at all, in 1790), I have a right to say, that, during all that interval, this gentleman could not have had the least reasonable cause of complaint against Mr. Bingham : his jealousy must, of course, have begun *after* that period ; for, had there been grounds for it *before*, there could be no sense in the admission of his Counsel, nor any foundation for that parental consolation which was brought forward in the very front of the Cause.

The next dry date is, therefore, the 24th of July 1793 ; and I put it to his Lordship, that there is no manner of evidence which can be pressed into this Cause *previous* to that time. Let me next disembarass the Cause from another assertion of my Learned Friend, namely, that a divorce cannot take place before the birth of this child ; and that, if the child happens to be a son, which is *one* contingency ; and if the child so born does not die, which is *another* contingency, and if the Noble Duke dies without issue, which is a *third* contingency, *then* this child might inherit the honours of the House of Norfolk : that I deny.—My recent experience tells

me the contrary. In a case where Mr. Stewart, a gentleman in Ireland, stood in a similar predicament, the Lords and Commons of England not only passed an Act of Divorce between him and his lady, but, on finding there was no access on the part of the husband, and that the child was not his, they bastardized the issue.

What then remains in this Cause?—Gentlemen, there remains only this—In what manner, when you have heard my evidence (for this is a Cause, which, like all others, must stand upon evidence), the Plaintiff shall be able to prove what I have the Noble Judge's authority for saying, he *must* prove, viz. *the loss of the comfort and society of his wife, by the seduction of the Defendant.*—THAT is the very gist of the action.—The loss of her affection, and of domestic happiness, are the only legal foundations of his complaint.

Now, before any thing can be *lost*, it must have *existed*;—before any thing can be taken away from a man, he must have had it;—before the seduction of a woman's affections from her husband can take place, he must have possessed her affections.

Gentlemen, my Friend, Mr. Mingay, acknowledges this to be the law, and he shapes his case accordingly: he represents his Client, a branch of a most illustrious House, as casting the eyes of affection upon a *disengaged* woman, and of rank equal to, or, at least, suitable to his own: he states a marriage of mutual affection, and endeavours to show,

that this young couple, with all the ardour of love, flew into each other's embraces : he shows a child, the fruit of that affection, and finishes with introducing the seductive adulterer coming to disturb all this happiness, and to destroy the blessings which he describes : he exhibits the Defendant, coming with all the rashness and impetuosity of youth, careless of the consequences, and thinking of nothing but how he could indulge his own lustful appetite, at the expense of another man's honour ; while the unhappy husband is represented, as watching with anxiety over his beloved wife, anxious to secure her affections, and on his guard to preserve her virtue. Gentlemen, if such a case, or any thing resembling it, is established, I shall leave the Defendant to whatever measure of damages you choose in your resentment to inflict.

In order, therefore, to examine this matter (and I shall support every syllable that I utter, with the most precise and uncontrovertible proofs) ; I will begin with drawing up the curtains of this blessed marriage-bed, whose joys are supposed to have been nipped in the bud, by the Defendant's adulterous seduction.

Nothing, certainly, is more delightful to the human fancy, than the possession of a beautiful woman in the prime of health, and youthful passion : it is, beyond all doubt, the highest enjoyment which God in his benevolence, and for the wisest purposes, has bestowed upon his own image : I reverence, as I ought, that mysterious union of mind

and body; which, while it continues our species, is the source of all our affections; which builds up and dignifies the condition of human life; which binds the husband to the wife by ties more indissoluble, than laws can possibly create; and which, by the reciprocal endearments arising from a mutual passion, a mutual interest, and a mutual honour, lays the foundation of that parental affection which dies in the brutes, with the necessities of Nature, but which reflects back again upon the human parents, the unspeakable sympathies of their offspring, and all the sweet, delightful relations of social existence.—While the curtains, therefore, are yet closed upon this bridal scene, your imaginations will naturally represent to you this charming woman, endeavouring to conceal sensations which modesty forbids the sex, however enamoured, too openly to reveal; wishing, beyond adequate expression, what she must not even attempt to express; and seemingly resisting what she burns to enjoy.

Alas, Gentlemen! you must now prepare to see in the room of this, a scene of horror, and of sorrow; you must prepare to see a noble lady, whose birth surely required no further illustration; who had been courted to marriage before she ever heard even her husband's name; and whose affections were irretrievably bestowed upon, and pledged to my honourable and unfortunate Client; you must behold her given up to the Plaintiff by the infatuation of parents, and stretched upon this bridal bed as upon

a rack ;—torn from the arms of a beloved and impassioned youth, himself of noble birth, only to secure the honours of a higher title ; a legal victim on the altar of Heraldry.

Gentlemen, this is no high colouring for the purpose of a cause ;—no words of an advocate can go beyond the plain, unadorned effect of the evidence : I will prove to you, that when she prepared to retire to her chamber, she threw her desponding arms around the neck of her confidential attendant, and wept upon her as a criminal preparing for execution : I will prove to you, that she met her bridegroom with sighs and tears ; the sighs and tears of afflicted love for Mr. Bingham, and of rooted aversion to her husband :—I think I almost hear her addressing him in the language of the poet,—

“ I tell thee, Howard,

“ Such hearts as ours were never pair'd above ;

“ Ill-suited to each other ; join'd, not match'd ;

“ Some sullen influence, a foe to both,

“ Has wrought this fatal marriage to undo us.

“ Mark but the frame and temper of our minds,

“ How very much we differ.—Ev'n this day,

“ That fills thee with such ecstasy and transport,

“ To me brings nothing that should make me bless it,

“ To think it better than the day before,

“ Or any other in the course of time,

“ That duly took its turn, and was forgotten.”

Gentlemen, this was not the sudden burst of youthful disappointment, but the fixed and settled

habit of a mind deserving of a happier fate :—I shall prove that she frequently spent her nights upon a couch, in her own apartments, dissolved in tears : that she frequently declared to her woman that she would rather go to Newgate than to Mr. Howard's bed ; and it will appear, by his own confession, that for months subsequent to the marriage she obstinately refused him the privileges of a husband.

To all this it will be said by the Plaintiff's Counsel (as it has indeed been hinted already), that disgust and alienation from her husband could not but be expected ; but that it arose from her affection for Mr. Bingham.—Be it so, Gentlemen.—I readily admit, that if Mr. Bingham's acquaintance with the lady had commenced *subsequent to the marriage*, the argument would be irresistible, and the criminal conclusion against him unanswerable : but has Mr. Howard a right to instruct his Counsel to charge my honourable Client with seduction when *he himself* was the SEDUCER ? My Learned Friend deprecates the power of what he terms my pathetic eloquence : Alas, Gentlemen ! if I possessed it, the occasion forbids its exertion, because Mr. Bingham has only to defend *himself*, and cannot demand damages from Mr. Howard for depriving him of what was *his* by a title superior to any law which man has a moral right to make : Mr. Howard was NEVER MARRIED : God and nature forbid the banns of such a marriage.—If, therefore, Mr. Bingham this day could have, by me, addressed to you his wrongs in the character of a

Plaintiff demanding reparation, what damages might I not have asked for him ; and, without the aid of this imputed eloquence, what damages might I not have expected ?

I would have brought before you a noble youth, who had fixed his affections upon one of the most beautiful of her sex, and who enjoyed hers in return.—I would have shown you their suitable condition ; —I would have painted the expectation of an honourable union, and would have concluded by showing her to you in the arms of another, by the legal prostitution of parental choice in the teeth of affection : with child by a rival, and only reclaimed at last, after so cruel and so afflicting a divorce, with her freshest charms despoiled, and her very morals in a manner impeached, by asserting the purity and virtue of her original and spotless choice.—Good God ! imagine my Client to be PLAINTIFF, and what damages are you not prepared to give him ? and yet he is here as DEFENDANT, and damages are demanded against HIM.—Oh, monstrous conclusion !

Gentlemen, considering my Client as perfectly safe, under these circumstances, I may spare a moment to render this Cause beneficial to the public.

It involves in it an awful lesson ; and more instructive lessons are taught in Courts of Justice than the church is able to inculcate.—Morals come in the cold abstract from pulpits ; but men smart

under them practically when we lawyers are the preachers.

Let the aristocracy of England, which trembles so much for itself, take heed to its own security : let the nobles of England, if they mean to preserve that pre-eminence which, in some shape or other, must exist in every social community, take care to support it by aiming at that which is creative, and alone creative, of real superiority. Instead of matching themselves to supply wealth, to be again idly squandered in debauching excesses, or to round the quarters of a family shield ; instead of continuing their names and honours in cold and alienated embraces, amidst the enervating rounds of shallow dissipation, let them live as their fathers of old lived before them ;—let them marry as affection and prudence lead the way, and in the ardours of mutual love, and in the simplicities of rural life, let them lay the foundation of a vigorous race of men, firm in their bodies, and moral from early habits ; and instead of wasting their fortunes and their strength in the tasteless circles of debauchery, let them light up their magnificent and hospitable halls to the gentry and peasantry of the country, extending the consolations of wealth and influence to the poor.—Let them but do this,—and instead of those dangerous and distracted divisions between the different ranks of life, and those jealousies of the multitude so often blindly painted as big with destruction ; we should see our country as one large and harmonious

family, which can never be accomplished amidst vice and corruption, by wars or treaties, by informations *ex officio* for libels, or by any of the tricks and artifices of the state :—would to God this system had been followed in the instance before us !— Surely the noble house of Fauconberg needed no further illustration ; nor the still nobler house of Howard, with blood enough to have inoculated half the kingdom.—I desire to be understood to make these observations as general moral reflections, and not personally to the families in question ; least of all to the noble house of Norfolk, the head of which is now present ; since no man, in my opinion, has more at heart the liberty of the subject, and the honour of our country.

Having shown the feeble expectation of happiness from this marriage, the next point to be considered is this :—Did Mr. Bingham take advantage of that circumstance to increase the disunion ?—I answer, No.—I will prove to you that he conducted himself with a moderation and restraint, and with a command over his passions, which I confess I did not expect to find, and which in young men is not to be expected :—I shall prove to you, by Mr. Greville, that on this marriage taking place with the betrothed object of his affections, he went away a desponding man ; his health declined ; he retired into the country to restore it ; and it will appear, that for months afterwards he never saw this lady until by mere accident he met her ; and then, so

far was he from endeavouring to renew his connexion with her, that she came home in tears, and said, he frowned at her as he passed :—this I shall prove to you by the evidence in the Cause.

Gentlemen, that is not all ;—it will appear that, when he returned to town, he took no manner of notice of her ; and that her unhappiness was beyond all power of expression.—How, indeed, could it be otherwise after the account I have given you of the marriage ?—I shall prove, besides, by a gentleman who married one of the daughters of a person to whom this country is deeply indebted for his eminent and meritorious service (Marquis Cornwallis), that from her utter reluctance to her husband, although in every respect honourable and correct in his manners and behaviour, he was not allowed *even the privileges of a husband*, for months after the marriage.—This I mentioned to you before, and only now repeat it in the statement of the proofs.—Nothing better, indeed, could be expected :—who can controul the will of a mis-matched, disappointed woman ?—Who can restrain or direct her passions ?—I beg leave to assure Mr. Howard (and I hope he will believe me when I say it), that I think his conduct towards this lady was just such as might have been expected from a husband who saw himself to be the object of disgust to the woman he had chosen for his wife ; and it is with this view only that I shall call a gentleman to say how Mr. Howard spoke of this supposed, but,

in my mind, impossible object of his adoration. How, indeed, is it possible to adore a woman when you know her affections are rivetted to another?—It is unnatural!—A man may have that *appetite* which is common to the brutes, and too indelicate to be described; but he can never retain an *affection* which is returned with detestation. Lady Elizabeth, I understand, was, at one time, going in a phaeton:—“There she goes,” said Mr. Howard; “God damn her—I wish she may break her neck—I should take care how I got another.” This may seem unfeeling behaviour; but in Mr. Howard’s situation, Gentlemen, it was the most natural thing in the world, for they cordially hated one another.—At last, however, the period arrived when this scene of discord became insupportable, and nothing could exceed the generosity and manly feeling of the noble person (the Duke of Norfolk) whose name I have been obliged to use in the course of this cause, in his interference to effect that separation which is falsely imputed to Mr. Bingham:—he felt so much commiseration for this unhappy lady, that he wrote to her in the most affecting style;—I believe I have got a letter from his Grace to Lady Elizabeth, dated Sunderland, July the 27th, that is, three days after their separation; but before he knew it had actually taken place: it was written in consequence of one received from Mr. Howard upon the subject:—among other things he says, “*I sincerely feel for you.*” Now, if the Duke had not known at that

time that Mr. Bingham had her earliest and legitimate affections, she could not have been an object of that pity which she received : she was, indeed, an object of the sincerest pity, and the sum and substance of this mighty seduction will turn out to be no more than this ; that she was affectionately received by Mr. Bingham after the final period of voluntary separation : at four o'clock this miserable couple had parted *by consent*, and the chaise was not ordered till she might be considered as a single woman by the abandonment of her husband. Had the separation been *legal and formal*, I should have applied to his Lordship, upon the most unquestionable authorities, to nonsuit the Plaintiff ; for this action being founded upon the loss of the wife's society, it must necessarily fall to the ground if it appears that the society, though not the marriage union, was interrupted by a previous act of his own : in that hour of separation I am persuaded he never considered Mr. Bingham as an object of resentment or reproach : he was the author of his own misfortunes, and I can conceive him to have exclaimed in the language of the poet, as they parted,

" ——— Elizabeth never lov'd me,

" Let no man, after me, a woman wed

" Whose heart he knows he has not ; though she brings

" A mine of gold, a kingdom for her dowry.

" For let her seem, like the night's shadowy queen,

" Cold and contemplative—he cannot trust her :

" She may, she will, bring shame and sorrow on him ;

" The worst of sorrows, and the worst of shames !"

You have, therefore, before you, Gentlemen, two young men of fashion, both of noble families, and in the flower of youth : the proceedings, though not collusive, cannot possibly be vindictive ; they are indispensably preliminary to the dissolution of an inauspicious marriage, which never should have existed : Mr. Howard may then profit by an useful, though an unpleasant experience, and be happier with a woman whose mind he may find disengaged ; whilst the parents of the rising generation, taking warning from the lesson which the business of the day so forcibly teaches, may avert from their families, and the public, that bitterness of disunion, which, while human nature continues to be itself, will ever be produced to the end of time, from similar conjunctures.

Gentlemen, I have endeavoured so to conduct this cause as to offend no man :—I have guarded against every expression which could inflict unnecessary pain ; and, in doing so, I know that I have not only served my Client's interests, but truly represented his honourable and manly disposition. As the case before you cannot be considered by any reasonable man as an occasion for damages, I might here properly conclude ; yet, that I may omit nothing which might apply to any possible view of the subject, I will conclude with reminding you, that my Client is a member of a numerous family ; that, though Lord Lucan's fortune is considerable, his rank calls for a corresponding equipage and expense :

he has other children—one already married to an illustrious nobleman, and another yet to be married to some man who must be happy indeed if he shall know her value : Mr. Bingham, therefore, is a man of no fortune ; but the heir only of, I trust, a very distant expectation. Under all these circumstances, it is but fair to believe, that Mr. Howard comes here for the reasons I have assigned, and not to take money out of the pocket of Mr. Bingham to put into his own.—You will, therefore, consider, Gentlemen, whether it would be creditable for you to offer, what it would be disgraceful for Mr. Howard to receive,

THE KING v. CUTHELL.

P R E F A C E.

THE following Speech of Lord Erskine, in the Court of King's Bench, at Westminster, on the 21st of February 1799, for Mr. Cuthell, the bookseller, in Holborn, becomes peculiarly interesting at the present moment, from the verdict of a Special Jury very lately at Guildhall, London, in the case of Mr. White, the proprietor of the Independent Whig; as the doctrine upon which that verdict appears to have proceeded, was strongly insisted upon by Lord Erskine in Mr. Cuthell's case, and every possible argument employed to support it; but the doctrine was then over-ruled by Lord Kenyon, at Westminster, as it was lately by Lord Ellenborough at Guildhall; and, indeed, Lord Erskine appears to have been so sensible of the current of authorities against him, which would, at all events, be binding on a single Judge proceeding on such a trial, whatever he might think of the propriety of former decisions on the subject, that he appears to have pressed the Jury to bring in a special verdict in Mr.

Cuthell's case; finding the publication, or even a negligent publication, but negativing the criminal intention charged by the Indictment; so as to bring the question before all the Judges, did even before the House of Lords, in the dernier resort—whether such a verdict would support a judgment on the record. The case of Mr. Cuthell was shortly this: The Bishop of Landaff, in the year 1798, had published a pamphlet inculcating the duty of the people of this country, to exert themselves to the utmost in the critical exigency of its affairs, in consequence of the French revolution, and the danger of an invasion from France, and inculcating the propriety of submitting to a regular system of high taxation within the year, for supplying every necessity of the state. To this pamphlet the Rev. Mr. Gilbert Wakefield, well known and remembered as an eminent scholar, published a reply, on the appearance of which in the shops of London, the late Mr. Johnson of St. Paul's Churchyard, and another bookseller who had sold it, were prosecuted by the Attorney-General, and convicted; Lord Kenyon and the two Special Juries who tried the causes at Guildhall, having considered Mr. Wakefield's pamphlet to be a seditious libel, and the booksellers responsible as publishers.

After these convictions, the Attorney-General indicted Mr. Wakefield himself as the author, and Mr. Cuthell, the bookseller, of Holborn, who had sold it in his shop. Mr. Cuthell's case was a very particular one. He was not a publisher of books or

pamphlets on political or other transitory subjects; but dealt almost entirely in books of classical learning; and as such a bookseller had been selected by Mr. Wakefield to publish many of his learned works, but never any other; nor had, indeed, Mr. Wakefield written any other; nor did it appear that Mr. Cuthell had any reason to suspect that Mr. Wakefield had become a writer upon any political topics; as the Bishop of Landaff, to whom he was publishing a reply, had written largely upon theological subjects.

The reply to the Bishop of Landaff was not printed by Mr. Cuthell, but by a Mr. Hamilton, a printer, employed by Mr. Wakefield himself; who directed some copies to be sent, for sale, to Mr. Cuthell's shop, as he had always been the publisher and seller of his many classical works. Mr. Cuthell began to sell them without due examination, but instantly stopped the sale upon the first intimation of the nature and character of the work.

The Indictment against Mr. Wakefield, the author, and against Mr. Cuthell, the bookseller, were appointed on the same day, the 21st of February 1799, for trial; and Mr. Cuthell being to be tried first, and Mr. Wakefield being to make his own defence as the author, Lord Erskine appears to have taken his stand for Mr. Cuthell upon his particular situation, contending, that having always been the publisher of Mr. Wakefield's works upon subjects of ancient learning only; and that this pamphlet being

brought to him by Mr. Wakefield himself, without any notice of so great a change of subject, he had suffered it to be sold upon the faith of Mr. Wakefield's character, and the abstract nature of all his other works, without suspecting that the subject was political, much less seditious; the shopman, who was called as a witness, having sworn that it would not otherwise, under his general instructions, and the nature of Mr. Cuthell's business, have found any entrance into the shop. To confirm this defence, Mr. Wakefield, the author, was called by Mr. Cuthell, but declined answering, as it might criminate himself. How the exculpation of Mr. Cuthell could have criminated Mr. Wakefield, beyond the writing of the book, of which the Crown was known to have had full proof, and which was not afterwards denied by Mr. Wakefield in his own defence, it is not easy to understand; but Mr. Wakefield had a most unquestionable right to refuse the aid of his testimony to Mr. Cuthell, whose case, however, suffered considerably from the want of it.

As the law stands at present, from a current of authorities, it is undoubtedly not competent to any Judge trying an Information, or Indictment, for a libel, to give any other direction to a Jury, than that a publication, though proved to have been sold by a servant, without knowledge of the master, involves the master in all the criminal consequences of the publication, and subjects him to an Information, or Indictment, as a treasonable, seditious, or malign-

want publisher, as the case may be; and Lord Ellenborough, therefore, upon a late trial, could give no other opinion to the Jury at Guildhall, than that which was delivered by his Lordship. But surely it may well deserve the consideration of Parliament, whether the case of printing or publishing a libel should be left, as it is, such an anomaly in the law, and that Juries should be called upon to pronounce, on their oaths, that a Defendant published treasonably, seditiously, or malignantly, who was, from accident, or, if you will, even from negligence, unconscious of the existence of the publication, which constitutes his crime.

It is true that this case of mere negligence without evil intention, is difficult of proof. Yet it occurs frequently, and should be distinguished from a criminal publication; and the distinction would be most easy consistently with all the rules of criminal law.

If the negligent publication of a libel, though without criminal intention, ought to continue to be an anomaly, and to subject the negligent publisher to an Information, or Indictment, as well as to an action for damages; why ought not the law to be so declared or enacted, or even without declaration or enactment, such Informations and Indictments be drawn with distinct counts, or charges; one charging the criminal intention, so as to identify the criminal publisher with the author, and another charging a negligent publication, by which the crimes which are extremely different, and the punish-

ments which ought to be equally so, would be distinguished from each other ; whereas, according to the present course of proceeding, a mere negligent publisher must be found guilty of the Indictment, charging a criminal publication only ; and, after conviction, stands before the Court (as the case may be), as a treasonable, seditious, or malignant publisher, and cannot be received to mitigate his sentence as having been negligent only, being estopped by the record of the conviction ; although the Judges, from humanity and justice, are every day obliged, in the teeth of the record, to mitigate, by a side-wind, the judgments of the law, upon principles which the law does not openly sanction. It is this anomaly which so often entangles the consciences of Juries, and will continue to do so till the case is duly considered by the Legislature, and the question, one way or the other, set at rest. From the same anomaly, the Rev. Mr. Bate Dudley was acquitted as not being a criminal publisher, many years ago, Lord Erskine and Mr. Pitt, then at the Bar, being his Counsel. But the acquittal was against the opinion of Lord Mansfield, who wholly over-ruled Lord Erskine's argument, and directed the Jury to convict.

All that Lord Erskine then and in the following case of Mr. Cuthell appears to have contended for, is, that if a negligent publication be an indictable offence, the party should be so charged, and ought not to be convicted on a count, which charges a CRI-

MINAL intention, which he is in a condition to negative by satisfactory proof.

A further evil, indeed, and no small one, attends the practice of not distinguishing the criminal from the negligent publication by distinct charges in the Indictment. Judges and Juries will occasionally differ totally from each other. If the Juries, finding verdicts of acquittal in such cases, against the opinion of the Judge, are considered by the public, or any part of it, to have acted improperly, the trial by Jury suffers in proportion; and if, on the other hand, such Juries are considered to have properly resisted the opinion of the Judge (although the Judge had no jurisdiction to give a contrary opinion); the judicial authority then suffers in public estimation; whereas the constitution of the country actually depends upon the utmost reverence for, and confidence in, the administration of justice in all its parts, which never existed in any country in the world in such purity as in our own.

THE KING v. JOHN CUTHELL.

February 21st, 1799.

I RISE to address you, Gentlemen of the Jury, with as much anxiety as I have ever felt in the course of my professional life.—The duty I have to perform is difficult and delicate.—I am Counsel for Mr. Cuthell *only*, who is charged merely as publisher of a writing, for which the Reverend Gentleman now in Court (*and who is to plead his own cause*) is immediately afterwards to be tried, on another Indictment, as the *author*. The rules of law would entitle Mr. Cuthell to a *double* defence; he might maintain the innocence of the *book*, because *his* crime as *publisher* can have no existence unless the matter be criminal which he has published; and supposing it to *be* criminal, he might separate himself, by evidence, from the criminal purpose charged upon him by the record.—The first of these offices he must not be supposed to shrink from because of its difficulty, or from the force of the verdicts which the Attorney-General has adverted to as having been given in the city of London; Mr. Johnson, who

was *there* convicted, stood in the ordinary situation of a bookseller selling a book in the course of his trade:—on that occasion I thought myself bound to make the defence of *the book*; but the defence of *a book* may be one thing, and that of its publisher another.—There can be no proceedings *IN REM* by an Attorney-General against *a book*, as against tea or brandy in the Exchequer.—The *intention of the author and of each publisher* involves another consideration, and it is impossible to pronounce what opinion the Jury of London might have held concerning the book, if its author had been to lay before them his own motives, and the circumstances under which it was written. Even after Mr. Cuthell shall be convicted from my failing in his defence (a supposition I only put, as the wisest tribunals are fallible in their judgments), the verdict ought not, in the remotest degree, to affect the Reverend Gentleman who is afterwards to defend himself.—*His* motives and intentions will be an entirely new cause, to be judged of as if no trial had ever been had upon the subject; and so far from being prejudged by other decisions, I think that, for many reasons, he will be entitled to the most impartial and the most indulgent attention. These considerations have determined me upon the course I shall pursue.—As *Mr. Cuthell's* exculpation is by disconnecting himself wholly from the work as a CRIMINAL publisher, from his total ignorance of its contents, and, indeed, almost of its existence, I shall leave the pre-

vince of its defence to Mr. Wakefield himself, who can best explain to his own Jury the genuine sentiments which produced it, and whose very deportment and manner, in pleading his own cause, may strikingly enforce upon their consciences and understanding the truth and integrity of his defence. Observations from *me* might only coldly anticipate, and perhaps clash with the arguments which the author has a just, natural, and a most interesting right to insist upon for himself.

There is another consideration which further induces me to pursue this course. The cause, so conducted, will involve a most important question as it regards the liberty of the press; because, though the principles of criminal and civil justice are distinguished by as clear a boundary as that which separates the hemispheres of light and darkness, and though they are carried into daily practice throughout the whole circle of the law; yet they have been too long confounded and blended together when a *libel* is the crime to be judged. This confusion, Gentlemen, has not proceeded from any difficulty which has involved the subject, because, of all the parts of our complicated system of law, it is the simplest and clearest; but because POLITICAL JUDGES, FOLLOWING ONE ANOTHER IN CLOSE ORDER, and endeavouring to abridge the rights and privileges of Juries, have perverted and distorted the clearest maxims of universal jurisprudence, and the most uniform precedents of English law.—Nothing

can establish this so decisively as the concurrence with which all Judges have agreed in the principles of *civil* actions for libels, or slander, concerning which there never has been a controversy, nor is there to be found throughout the numerous reports of our Courts of Justice, a discordant case on the subject; but in *Indictments* for *libels*, or, more properly, in *Indictments* for *political* libels, the confusion began and ended.

In the case of a *civil* action throughout the whole range of civil injuries, the master is always *civilliter* answerable for the act of his servant or agent; and accident or neglect can therefore be no answer to a Plaintiff, complaining of a consequential wrong. If the driver of a public carriage maliciously overturns another upon the road whilst the proprietor is asleep in his bed at a hundred miles distance, the party injuring must unquestionably pay the damages to a farthing; but though such malicious servant might also be indicted, and suffer an infamous judgment, *could the master also become the object of such a prosecution?* CERTAINLY NOT.—In the same manner, partners in trade are *civilly* answerable for bills drawn by one another, or by their agents, drawing them by procuration, though fraudulently, and in abuse of their trusts; but if one partner commits a fraud by forgery or fictitious indorsements, so as to subject *himself* to death, or other punishment by Indictment, *could the other partners* be indicted?—To answer such a question here would be folly; be-

cause it not only answers itself in the *negative*, but exposes to scorn every argument which would confound Indictments with civil actions. WHY then is *printing and publishing* to be an exception to every other human act? WHY is a man to be answerable *criminaliter* for the crime of his servant in this instance more than in all other cases? Why is a man who happens to have published a libel under circumstances of mere accident, or, if you will, from actual carelessness or negligence, but *without criminal purpose*, to be subjected to an *infamous punishment*, and harangued from a British Bench as if he were the malignant author of that which it was confessed before the Court delivering the sentence, *that he never had seen or heard of*? As far, indeed, as damages go, the principle is intelligible and universal; but as it establishes *a crime*, and inflicts a punishment which affects character and imposes disgrace, it is shocking to humanity and insulting to common sense.—The Court of King's Bench, since I have been at the Bar (very long, I admit, before the Noble Lord presided in it; but under the administration of a truly great Judge), pronounced the infamous judgment of the pillory on a most respectable proprietor of a newspaper, for a libel on the Russian Ambassador, copied too out of another paper, but which *I myself* showed to the Court by the affidavit of his Physician, appeared in the *first* as well as in the *second* paper, whilst the Defendant was on his sick bed in the country, delirious in a fever. I be-

lieve that affidavit is still on the files of the Court.—I have thought of it often—I have dreamed of it, and started from my sleep—sunk back to sleep, and started from it again. The painful recollection of it I shall die with.—How is this vindicated? From the *supposed* necessity of the case.—An Indictment for a LIBEL is, *therefore*, considered to be an anomaly in the law.—*It was held so undoubtedly*; but the exposition of that *error* lies before me; the Libel Act lies before me, which *expressly*, and *in terms*, directs, that the trial of a libel shall be conducted *like every other trial for any other crime*; and that the Jury shall decide, *not* upon the mere fact of *printing or publishing*, but *upon the whole matter put in issue*, i. e. *the publication of the libel WITH THE INTENTIONS CHARGED BY THE INDICTMENT*.—This is the rule by the Libel Act; and *you*, the Jury, as well as the Court, are bound by it.—What, then, does the present Indictment charge?—Does it charge merely that Mr. Cuthell *published*, or *negligently published*, the Reply to the Bishop of Landaff?—No. It charges, “*that the Defendant, being a wicked and*”
“*sedition person, and malignantly and traitorously*”
“*intending to secure the invasion of Great Britain*”
“*by the French, and to induce the people not to de-*”
“*fend the country, had published, &c. SETTING*”
“*FORTH THE BOOK.*” This is the charge, and *you* must believe *the whole complex proposition* before the Defendant can be legally convicted. No man can stand up to deny this in the teeth of the Libel Act,

which reduces the question wholly to the intention, which ought to be a foundation for their verdict. Is your belief of negligence sufficient to condemn Mr. Cuthell upon this Indictment, though you may discredit the criminal motive which is averred? The best way of trying that question, is to find the negligence by a special verdict, and *negative* the motives *as alleged by the Indictment*; do that, and I am satisfied.

I am not contending that it may not be wise that the law should punish printers and publishers even by way of Indictment, for *gross* negligence (*crassa negligentia*), because of the great danger of adopting a contrary rule. Let it, for argument's sake, be taken that such an Indictment may, even as the law stands, be properly maintained; but, if this be so, why should not the Indictment, in conformity with the universal rules of pleading, charge such negligence by a distinct count?—Upon what principle is a man, who is guilty of *one* crime, to be convicted, without a shadow of evidence, or in the teeth of all evidence, of *another* crime, greatly more heinous, and totally *different*?

If upon a count charging a *negligent* publication, a publisher were convicted, he could only appear upon the record to be guilty *from negligence*; but, according to the present practice, the Judge tells the Jury, that though a Defendant has only been *negligent*, he is guilty upon the whole record, which charges a *treasonable, seditious, or malignant*.

intention ; and after such a conviction, when he appears in Court to receive judgment, and reminds the Judge, who inveighs against his traitorous, seditious, or malignant conduct, that the evidence established his *negligence ONLY* ; he is instantly silenced, and told that he is estopped by the record, which charges a publication with these mischievous intentions, and of which entire charge the Jury have found him guilty. I appeal, boldly, to the truly excellent and learned Chief Justice, whether this be conformable to the precision of the English law in any of its other branches, or to the *justice* of any law throughout the world.

But it has been said, and truly, how is the intention to be proved but by the act ? I of course admit that the intentions of men are inferences of reason from their actions, *where the action can flow but from ONE motive, and be the reasonable result but of ONE INTENTION.*—Proof of *such* an action is undoubtedly most convincing proof of the only intention which could produce it ; but there are few such actions ; nor, indeed, scarcely any human conduct which may not, by circumstances, be qualified from its original *prima facie* character or appearance. This qualification is the foundation of all defence against imputed crimes. A mortal wound, or blow, without adequate provocation, visible to a Grand Jury, is a just foundation for an indictment of murder ; but the accused may repel that inference, and reduce the crime from murder to manslaughter, or to excusable, and

even to justifiable homicide. Mr. Cuthell asks no more:—he admits that on the evidence *now* before you he ought to be convicted, if the book is in your judgment a libel; because he stands before you as a publisher—and may be, therefore, taken to have been secretly connected with the author, or even to be the author himself:—but he claims the right of repelling those presumptions *by proof*; and the only difference between the Crown and me, will be, not as to the existence of the fact on which I rest my defence—but *whether the proof may be received as relevant, and be acted upon, if believed by you, the Jury*. I am sorry to say, Gentlemen, that it is now become a common-place position, that printers and booksellers are answerable for simple negligence; yet no Judge, in my hearing, has ever stated that *naked proposition* from the Bench; it has been imputed as the doctrine of the Noble and Learned Judge: *when* and *where* he delivered it I am ignorant—he has, on the contrary, tried Indictments on the principles of the Libel Bill, before the Libel Bill existed; and on these principles Stockdale was tried before him, and acquitted. Where a printer, indeed, has printed, or a bookseller has sold a book, written by an unknown or unproduced author, and cannot bring any evidence in his defence—he must, to be sure, in common sense, and upon every principle of law, be criminally responsible, if the thing published be a libel; *but not for negligence* only, but as criminal in the full extent of the Indictment. A pub-

lisher, indeed, though separated in *original* intention from the criminal motives of the author, may be found to be responsible in law, for the publication, upon the legal presumption that he had *adopted the criminal sentiments of the author, and criminally circulated them by printing or publication*. But such a conviction does by no means establish the proposition, that *innocent* printers or publishers, *where they can show their innocence*, are criminally responsible *for negligence only*. On the contrary, it proceeds upon the criminality being *prima facie* established by the act of publishing in cases where the printer or publisher cannot show the negligence or accident which had led to the publication ; *but where such mere negligence or accident can be established to the satisfaction of a Jury, which not very often can be the case*, the criminal inference is then repelled, and the Defendant ought to be entitled to an acquittal. The numerous convictions, therefore, of publishers *upon the mere act of publication*, establish no such proposition as that which the Attorney-General has contended for ; because such publishers were convicted of the criminal intentions charged in the Indictment, *not* upon the principle of criminal responsibility for an act of *neglect* only, but because it could not be established, *in these cases*, that the act of publishing arose from *negligence only*. By the act of publishing matter from whence a criminal intention results, as an inference of reason, and, therefore, as an inference of law, the criminal

mind is *prima facie* fairly imputable ; and in the absence, therefore, of satisfactory evidence on the part of the Defendant to repel the criminal conclusion, the guilt is duly established ; but, then, this is not doctrine applicable singly to libels—it applies equally to *all crimes* where the most innocent man may be convicted, if from unfortunate circumstances he cannot repel the presumptions arising from criminating proof. But the doctrine which I shall ever oppose, as destructive of every human security, and repugnant to the first elements of criminal justice, is this, *that THOUGH the Defendant, taking upon himself the difficult, and frequently impossible proof of accident or oversight, should be able to convince the Jury that he never saw the matter charged to be a libel—that it was imposed upon him as a work of a different quality—or, that he was absent when a servant sold it, and to which servant he had not given a general license to sell every thing which was brought to him—and who, moreover, could fortify the proof of his innocence by his general deportment and character ; yet, that such a publisher must nevertheless be found guilty as a malignant publisher, by virtue of an abstract legal proposition—this I deny—and have, throughout my whole professional life, uniformly denied. It never has been adjudged in such a shape as to be fairly grappled with. I positively deny such a doctrine, and I am sure that no Judge ever risked his character with the public by delivering it as law from the Bench. The Judges may have been bound at*

Nisi Prius, as I admit they are, to decide according to the current of decisions. I will meet my Learned Friend, the Attorney-General, in the Lords' House of Parliament on that question, *if you, the Jury, will assist me with the fact to raise it by finding as a Special Verdict—"That the book, if you please, was a libel—that Mr. Cuthell, the Defendant, published it; but that he published it from negligence and inadvertency, WITHOUT THE MOTIVES CHARGED BY THE INDICTMENT."*—If you, Gentlemen of the Jury, will find such a verdict, *I will consent never to re-enter Westminster Hall again, if one Judge out of the twelve will, upon a writ of error, pronounce judgment for the Crown.* The thing is IMPOSSIBLE; and the Libel Act was made for no other purpose than to suppress doctrines which had long been branded as pernicious and destructive to public freedom and security. The Libel Bill was passed to prevent trials of libels from being treated as *an anomaly in the law*, and to put them on a footing with all other crimes; and no crime can possibly exist *when the intention which constitutes its essence, can be separated from the act—"Actus not facit reum, nisi mens sit rea."* If a man, *without knowing the King*, were to give him a blow, which might even endanger his life, could he be convicted of compassing and imagining the *death of the King* under the statute of Edward III.? *Undoubtedly not*—because the *compassing or intention* was the crime, and the blow was only the overt act from whence the

compassing was to be a legal inference, unless the Prisoner repelled it by showing the circumstances of the *accident and ignorance* under which he assaulted the King. I of course admit that it is not necessary to prove that a publisher had seen the book he published : for if he authorizes his servants to publish *every thing without examination*, it would be sufficient proof, in the judgment of a Jury, according to circumstances, that he was the wilful and criminal publisher or author himself, or secretly connected with the author, and criminally implicated in his guilt. But the present question is, whether, *if he can convince you, the Jury, of his innocence, you are still bound to convict him under an imperative rule of law, though you believed his mind to have been unconscious of the crime imputed by the Indictment.*

If a man were to go upon the roof of a house in the Strand or Fleet Street, and throw down large stones upon the passengers below, it would undoubtedly be murder, though a stranger only were killed, against whom no particular malice could possibly be suspected ; i. e. it would be murder, if these facts were returned to the Judges by special verdict. But would a Jury be bound to convict him, even though they were convinced *by the clearest evidence*, that he had mistaken the side of the house, and from inadvertence had thrown the stones *into the street, instead of on the other side, which led to an unfrequented spot?* This proof might be *difficult*; but if *the proof existed*, and the Jury believed it,

WOULD IT BE MURDER? Common law, common sense, and common humanity, revolt alike at the idea.

The Attorney-General has admitted the true principle of the liberty of the press, as it regards the quality of a publication. He has admitted it, greatly to his honour, because he is the first Attorney-General who ever, to my knowledge, has so *distinctly* admitted it. He has, indeed, admitted the true principle in the very way I have always understood it in most of the criminal prosecutions which, in my time, have been the subject of trial. The questions have always arisen on the application of the *principle* to *particular cases*, and that is the sole question to-day. He has admitted that every subject has a clear right freely to discuss the principles and forms of the government, to argue upon their imperfections, and to propose remedies; to arraign, with decency and fair argument, the responsible ministers and magistrates of the country, though not to hold them up to general, indiscriminating execration and contempt;—and he has admitted also, that it is the office of the Jury to say, within which of the two descriptions any political writing was to be classed. This admission comes strongly in support of *publishers*. For if an author could not write legally upon any such subjects, publishers ought then to reject the book altogether upon the very view of the subject, as collected from the title-page, without adverting to the contents. But if writings respecting our go-

vernment, and its due administration, be unquestionably legal, a general bookseller has no such reserve imposed upon him from the *general subject of the work*, and must read his whole library in a perpetual state of imprisonment *in his shop*, to guard him from perpetual imprisonment *in a gaol*. If he published, for instance, the Encyclopædia of Paris or London—and in the examination of all science and of all art in such a stupendous work, there should be found, even in a single page or paragraph, a gross attack on religion, on morals, or on government, he must be presumed to be malignantly guilty, and (according to the argument) *not primâ facie merely*, but *conclusively*, to be the criminal promulgator of mischief, with mischievous intentions. Surely this can never be even stated in a court of justice. To talk of arguing it, is ridiculous. Such a person might, indeed, be *primâ facie* liable; and I admit that he is so; but, surely, a Court and Jury are invested with the jurisdiction of considering all the circumstances, and have the right of judging according to the just and rational inferences arising from the whole case, whether he was intentionally mischievous. This is all I contend for Mr. Cuthell; and it is a principle I never will abandon—it is a principle which does not require the support of the Libel Act, because it never has at any time been denied. When Lord Mansfield directed the Jury to convict Mr. Almon as the criminal publisher of Junius, he told them that if Junius was a libel, the guilt of publishing was an

inference of law from the act of publication, if a *Defendant called no witnesses to repel it, and that no witnesses had been examined by Mr. Almon.* But he admitted, in express and positive words, as reported by Sir James Burrow, in the fifth vol. of his Reports, "*That the publication of a libel might, by circumstances, be justified as legal, or excused as innocent, by circumstances to be established by the Defendant's proof.*" But according to the arguments of to-day no such defence is admissible. I admit, indeed, that it is rarely within the power of a printer or publisher to make out such a case by adequate evidence ; insomuch, that I have never yet been able to bring before a Jury, such a case as I have for Mr. Cuthell. But the rareness of the application renders it more unjust to distort the principle by the rejection of it, when it justly applies.

Having now laid down the only principle upon which Mr. Cuthell can be defended, *if the passages in the book, selected by the Indictment, are libellous,* I will now bring before you Mr. Cuthell's situation, the course of his trade and business, and his connexion, if it can be called one, with the work in question.

Mr. Cuthell, Gentlemen, is not at all in the situation of many equally respectable booksellers ; the course of whose trade, at the other quarters of the town, in the transitory publications of the day on all subjects, exposes them to the hourly risk of prosecutions on the most solid principles of law, with-

out almost the possibility of such a defence as Mr. Cuthell has to lay before you. They who wish to mix in the slander, the fashion, and the politics of the day, resort for newspapers and pamphlets, to those gay repositories, filled with the active, bustling, and ambitious men of the world. In those places nothing is read or talked of but what is happening at the very moment ;—a day generally consigning to oblivion, domestic events, however singular or afflicting ; even the revolutions of empires giving place in a week to a newer topic—even to the favoured pantomime of the day. The bookseller who stands behind such a counter, collecting and exposing to view whatever may be thrown upon it, without perusal or examination ; who can have no other possible reason for supposing that he sells no libels, except the absurd supposition that no libels are written—such a man is undoubtedly *prima facie* criminally responsible ; a responsibility *very rarely to be successfully repelled*. Sale of a libel by the master of such a shop, however pure in his morals, *without the most demonstrative evidence on his part to repel the presumption arising from the act*, is unquestionably evidence of publishing the book in the criminal acceptance of publication, because, *in the absence of such evidence*, he is justly taken to be the author himself, or acting in concert with him in giving currency and circulation to his work. I pray you, Gentlemen, to recollect that neither *now, nor at any former period*, have I ever disputed a proposition built upon reason

and matured by decisions into law. But Mr. Cuthell's shop is of a directly opposite description, and gives support to the evidence, by which I mean to repel the criminal presumption arising, *prima facie*, from the act of publication.

He resides in a gloomy avenue of Holborn. No coloured lamps or transparent shop-glasses dazzle the eye of vagrant curiosity, as in the places I have alluded to. As in the shops of fashion nothing scarcely is sold which the sun has gone down upon, so in *his house* nothing almost is to be seen that is not sacred to learning and consecrated by time.— There is not a greater difference between Lapland and Paris, than between the shops I have adverted to, and that of Mr. Cuthell. There you find the hunter after old editions; the scholar, who is engaged in some controversy, *not* concerning modern nations, but people and tongues which have for centuries passed away, and which continue to live only in the memory of the antiquary. Whilst crowds in the circles of gaiety or commerce are engaged at other libraries in the bitterness of political controversy, the pale student sits soberly discussing at Mr. Cuthell's, the points of the Hebrews or the accents of the Greeks. Mr. Cuthell, Gentlemen, takes no personal merit from this distinction from other booksellers. It is not from superior taste or virtue, or from prudent caution, that he pursues this course, but because he finds his profit in adhering to a particular and well-known branch of bookselling, as

every man will always find the surest profit in sticking to his own line of business. We lawyers find our profit, for the very same reason, in practising in one Court instead of scouring Westminster Hall ; because men are supposed, by their steadiness to one object, to know what they are about.

When I shall have made out this situation of Mr. Cuthell, and have shown his only connexion with the work in question from his literary connexion with its learned author, I shall have made out a case which will clearly amount to a legal defence as an innocent publisher.

I proceed to this defence with the greater satisfaction, as it is not only without possible injury to the Defendant, but in every possible event must contribute to his safety. If I succeed, I am at no man's mercy ; if I fail, even the very unsuccessful approach to a legal justification will present a case for mitigation, which the candour and justice of my Learned Friend will undoubtedly respect.

Mr. Cuthell had been applied to by Mr. Wakefield near a year before this little sudden performance had an existence, to sell *all his works* which had been sold before by a most respectable bookseller who had just retired from trade. It is but justice at once to Mr. Wakefield and to Mr. Cuthell, to say that the works of the former, which were numerous, were exemplary for their piety and learning, and that the character of the author fully corresponded with the inferences to be collected from his publications. He

was a most retired and domesticated scholar, marked and distinguished by a warm and glowing zeal for the Christian religion ; and what removed him from every possible suspicion in the mind of Mr. Cuthell, or of any man living, as being engaged in schemes for the introduction of anarchy and irreligion, his most recent publications, which had been committed to Mr. Cuthell for sale, were his answers to Mr. Paine's attack upon the doctrines of Christianity, which Mr. Wakefield had not merely refuted by argument, *but stigmatized in terms of the justest indignation.* This scorn and resentment at the works I have alluded to, was surely a full earnest of opinions which characterized a friend to religion, to harmony, peace, and good-will to men ; and Mr. Cuthell knew at the same time when the selling of this Reply to the Bishop of Landaff was first proposed to him, that Mr. Wakefield had before written to him on subjects of religious controversy, and that that excellent Prelate held his general character in respect. There is nothing, therefore, upon earth which amounts even to incaution in the little which follows to complete the statement of his case.

MR. WAKEFIELD having printed the pamphlet by Mr. Hamilton, his own printer, without the smallest previous communication with Mr. Cuthell, he brought him the form of the advertisement, when it was ready for sale, and desired him to send it for insertion in the newspapers marked in the margin of it ; and, at the same time, desired Hamilton, his

printer, to send the books, *already printed, to his shop*. This was over-night on the 31st of January. Some of the books were accordingly sent over-night, and the rest next day.

The advertisements having appeared in the morning papers, Mr. Cuthell was, of course, applied to for them by booksellers and others, and sold them accordingly, *not* because he sold *every thing*, much less works on *political subjects*; and, least of all, by unknown authors; but because his mind was fully prepossessed, that the work he was selling, was *an added publication to the long catalogue of Mr. Wakefield's other writings*, the character of all which for learning and morals had been universally acknowledged, and whose character for both had ever been undisputed. The book having become offensive, Mr. Cuthell was put in process by the Crown, and the service of it on his person was the *first* intimation or suspicion he had that the book was different from the many others which he had long been in the course of selling without offence or question. It is scarce necessary to add, that he then discontinued the sale, and sent back the copies to the author.

This, Gentlemen, is the case as it will be established by proof. I shall not recapitulate the principle of the defence which you are already in possession of, much less the application of the evidence to the principle, which appears to me to be self-evident, if the principle can be supported; and if it be denied or disputed, I only desire to remark, that no

person in my station who has ever made a point, desiring the law to be reserved to him, has ever been refused by the Noble and Learned Judge : I mean the right of having the facts found by special verdict, that the law may be settled by the ultimate jurisdiction of the country ; because Judges at *Nisi Prius* must follow the current of authorities, however erroneous the sources of them may be. *If you, the Jury*, therefore, shall, from the evidence, believe that Mr. Cuthell was innocent in intention, you may find *the publication*, and *negative the intention* charged by the record ; by doing which, if the Defendant be legally guilty, the Crown, notwithstanding that negative, will be entitled to judgment ; whereas, if you find a general verdict of Guilty, the term Guilty, in the general finding, will comprehend your opinion of the criminal intention charged, though it was not your intention to find it ; and Mr. Cuthell will not be allowed to controvert that finding as a fact, although you, the Jury, actually rejected it ; his guilt being part of your verdict, and conclusive of the intention which you disbelieved.

With regard to the book itself, though I leave its defence to its eminently learned author, yet there are some passages which I cannot help noticing.— (*Here Lord Emslie commented upon several of them, and then concluded as follows.*) I was particularly struck, indeed, that the following passage should have made any part of the Indictment : “ *We, sons of peace, or see, or think we see, a gleam of*

"glory through the mist which now envelops our horizon. Great revolutions are accomplishing; a general fermentation is working for the purpose of general refinement through the universe."

It does not follow from this opinion or prepossession of the author, that he therefore looks to the consummation of revolutions in the misery or destruction of his own country; the sentiment is the very reverse: it is, that amidst this continued scene of horror which confounds and overwhelms the human imagination, he reposes a pious confidence, that events, which appear evil on the surface, are, in the contemplation of the wise and benevolent Author of all things, leading on in their consequences to good, the prospect of which Mr. Wakefield considers *"as a gleam of glory through the mist which now envelops our horizon."* I confess for one, that, amidst all the crimes and horrors which I certainly feel mankind have to commiserate at this moment, perhaps beyond the example of any former period, crimes and horrors which, I trust, *my* humanity revolts at as much as any other man's, I see nothing to fear for our country or its government, not only from what I anticipate as their future consequences, but from what they have produced already: I see nothing to fear for England from the destruction of the monarchy and priesthood of France; and I see much to be thankful for in the destruction of papal tyranny and superstition. There has been a dreadful scene of misfortune and of crime,

but good has, through all times, been brought out of evil. I think I see something that is rapidly advancing the world to a higher state of civilization and happiness, by the destruction of systems which retarded both : the means have been, and will be, terrible ; but they have been, and will continue to be, in the hand of God.—I think I see the awful arm of Providence, not stopping short here, but stretched out to the destruction of the Mahometan tyranny and superstition also.—I think I see the freedom of the whole world maturing through it ; and so far from the evils anticipated by many men, acting for the best, but groping in the dark, and running against one another, I think I see future peace and happiness arising out of the disorder and confusion that now exists, as the sun emerges from the clouds : nor can I possibly conceive how all this ruin, falling upon tyrannous and blasphemous establishments, has the remotest bearing against the noble and enlightened system of our beloved country.—On the contrary, she has been the day-star of the world, purifying herself from age to age, as the earliest light of heaven shone in upon her ; and spreading with her triumphant sails, the influence of a reformed religion and a well-balanced liberty throughout the world. If England, then, is only true to the principles of her own excellent constitution, the revolt of other nations against their own systems cannot disturb her government. But what, after all, is my opinion, or the judgment of the Court, or the

collective judgment of all human beings upon the scenes now before us? We are like a swarm of ants upon an ant-hill, looking only at the surface we stand on; yet affecting to dispose of the universe, and to prescribe its course, when we cannot see an inch beyond the little compass of our transient existence. I cannot, therefore, bring myself to comprehend how the author's opinion, that Providence will bring, in the end, all the evils which afflict surrounding nations, to a happy and glorious consummation, can be tortured into a wish to subvert the government of his country,

The Attorney-General has admitted—I notice it to his honour, because all Attorney-Generals have not been so manly and liberal—the Attorney-General has admitted that he cannot seek, in this land of liberty, to deny the right of every subject to discuss, with freedom, the principles of our constitution—to examine its component parts, and to reason upon its imperfections, if, in his opinion, imperfections are to be found in it. Now this just admission cannot be qualified by a harsh and rigorous scrutiny into the language employed in the exercise of this high and useful privilege. It never can be said that you may tickle corruption with a straw, but that you must not shake it at its root. The true criterion, therefore, comes round again, at last, to *the MIND and INTENTION*, which, by taking the whole work together, and the character of its author into consideration, it is *your* office to determine; and

the concluding sentence of this publication, in which Mr. Wakefield must candidly be supposed to have summed up the purpose and application of his work, is quite decisive of its spirit and purpose, viz. that instead of looking to new sources of taxation to support the continuance of *war*, the safety of our country would better be consulted in making an effort towards *peace*; which, if defeated by the fraud or ambition of our enemy, would unite every heart and hand in our defence. Hear his own concluding words:—"RESTORE the spirit of your constitution, correct your abuses, and calm your temper; THEN (and surely they, who have been successful in their predictions through all this conflict, have more reason to expect attention to their opinions, than those who have been invariably wrong), THEN, I say, solicit peace; and, take my word for it, the French Republic, so far from insisting on any concessions of humiliation and disgrace, will come forwards to embrace you, will eagerly accept your friendship, and be proud of a connexion WITH THE FIRST PEOPLE IN THE UNIVERSE. Should I be mistaken in this event, and have formed a wrong judgment of their temper and designs, *still the good effect of this advice will be an inestimable acquisition*—a vigorous and generous UNANIMITY among ourselves."

In the defence I have made, there are but few passages I have noticed; respecting those, I am entitled to the protection of your candour; but you

are not to conclude that the others are indefensible, because I do not defend them—the defence of the book (as I before observed to you) being placed in other hands more fit to manage it, and it would have been out of my province, in Mr. Cuthell's case, to have entered more at large into the subject.

THE END.

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